A POST-RHETORICAL GOVERNMENT

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Abstract:

Congress and the White House once communicated with regularity, both between the branches and in ways that were intentionally developed by the Founders to provide for a functional government. Each branch deliberately changed from these traditional forms of communication and each continues to react and evolve to developments in media and technology with little consideration of the effects on governing and the country.

Presidents broke through Constitutional norms of communicating with frequent speeches, radio and television addresses, Tweets and Facebook posts and now frequently communicate directly with the public. Congress responded with responses to State of the Union addresses, opposition party legislative agendas, frequent appearances on cable news shows and a prolific presence on social media.

The evolution of the Motion to Recommit in the House of Representatives, shows how an obscure procedural tool has transformed into a rhetorical weapon used by the minority party in Congress to force tough votes and develop campaign ads. In this one small example, we can see the dramatic effects that this rhetorical evolution has on the governing process.

What do these rhetorical changes mean for communication between the two branches and what are the implications of these changes on our governance?

By reviewing case studies, it becomes clear that the rhetorical presidency lives now in a post-hyper rhetorical world where the "bully pulpit" still gives presidents a powerful platform to speak, but that speech is no longer able to penetrate echo chambers of a partisan media. Congress finds itself in a similar position. Members may now have large followings on Twitter or appear nightly on cable news talk shows, but ultimately, they are reaching individuals who already share their political views. Even the motion to recommit, once the strongest legislative tool available to the minority party in the House of Representatives, was recently rendered nearly useless by the Democratic party in the House Rules package for the 117th Congress because of the way it has been manipulated in recent decades.

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Introduction

On January 5, 2016, tears visibly fell from President Barack Obama eyes as he spoke to the nation during a live address from the East Room of the White House. The speech outlined a series of executive actions the White House was announcing on gun control after the horrific shooting of twenty-six people, most of which were children, at Sandy Hook Elementary School in Newtown, Connecticut, earlier that week. Almost exactly three years earlier, after another tragic shooting, the White House announced a comprehensive plan to reduce gun violence that included pleas for Congress to pass background check legislation for all firearm sales, closing the so-called "gun show loophole."[1] Ultimately, the president was unable to move his legislative agenda through the Republican Congress, even with this emotional, public appeal after Sandy Hook; instead, he was forced to rely on executive actions to enact a semblance of change that matched his rhetoric and could be considered action. On the evening after his speech to the nation, a Fox News contributor questioned the authenticity of the president's tears, offering to "check that podium for like a raw onion or some no-more-tears," a sentiment shared by many of Obama's political opponents.[2] The president's executive actions on

[1] "Now Is the Time to Do Something about Gun Violence." 2016. *The White House*. National Archives and Records Administration. 2016. https://obamawhitehouse.archives.gov/issues/preventing-gun-violence#what-we-can-do.
[2] Lisa Hagen, 2016, "Fox News Host: Obama Used 'Raw Onion' to Cry." *The Hill*, January 5, 2016. https://thehill.com/blogs/blog-briefing-room/news/264872-fox-news-host-obama-used-raw-onion-to-cry.

gun control were reversed almost the moment President Trump entered office in January 2017.

This is a snapshot of the rhetorical state in which we find the modern presidency and, more broadly, the government as a whole, where the executive and legislative branches speak loudly and frequently into partisan echo chambers that render them ineffective in moving their agenda. Presidents and the Congress, however, once communicated with each other and with the public in ways that were intentionally developed by the Founders to provide for a functional and deliberative government. Over the last century, and particularly over the past forty years, each branch evolved from the traditional forms of communication and each continues to respond to developments in media and technology with little consideration of the effects on governing and the country. As presidents strategically focused on communicating their policy agendas with the public, rallying the electorate to their cause and acting as the interpreter and agent of their will, Congress was forced to respond. Technology developed the methods and means of this communication, creating effects that were subtle but remarkably disruptive to the Founder's vision for good government.

Under the concept of the rhetorical presidency, the simple act of speaking by a president is considered governing, presidents are executors of the popular will and

"word rivals deed as the measure of presidential performance."[3] But this was not always the case, argues Jeffrey Tulis. The Founders put in place constitutional constraints to set the presidency at a distance from the people and popular will, unlike the legislature; for example, presidents are elected by the electoral college and not the popular vote. Tulis argues that the Founders intended the presidency "to be representative of the people, but not merely responsive to popular will."[4] In *Federalist Paper* No. 68, Alexander Hamilton explains that "the immediate election [of a president] should be made by men most capable of analyzing the qualities adapted to the station, and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice. A small number of persons, selected by their fellow-citizens from the general mass, will be most likely to possess the information and discernment requisite to such complicated investigations."[5] This defense of the Electoral College describes a system where presidents were not elected directly by the people and therefore kept at a distance. Presidents, perhaps inevitably, broke through the traditional Constitutional norms of communicating, like the State of the Union address and the veto power, by adding frequent speeches, town halls, radio, and television addresses, and now Tweets and Facebook posts. Presidents now frequently communicate to the public, sometimes

[3] Tulis, *The Rhetorical Presidency*, 160.
[4] Ibid., 39.
[5] Alexander Hamilton, *Federalist* No. 68, in *The Federalist Papers,* ed. (Washington: Library of Congress)

daily, and constantly campaign, even holding rallies in targeted locations to promote their agendas.

For Tulis, there are now two constitutions by which the modern presidency is defined, with the second layered on top of the first. The first is the original Constitution which outlines the duties of the executive and provides opportunities for a president to communicate a position on policy and legislation. Article 1, Section 7 gives the president the power of the veto and affords the office a veto message that outlines "his objections to the House in which the bill shall have originated, who shall enter the objections at large on their journal, and proceed to consider it."[6] The second opportunity is provided in a State of the Union: "He shall from time to time give to the Congress information on the State of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient."[7]

Outside of the Constitution, Tulis looks at precedent and the example set by George Washington – and followed by most presidents in the nineteenth century – for guidance on when the president should address the people and in what tone and manner. This is generally embodied in Washington's inaugural addresses. Tulis notes that "Washington devoted considerable time to deciding upon the appropriate modes

[6] U.S. Const. art. I, § 7.
[7] U.S. Const. art. II, § 3.

of rhetoric" which included "when and in what manner to appear before Congress."[8] Washington refused to talk policy during his inaugural addresses, instead focusing on building his reputation and that of the office. Tulis explains that Washington considered presenting Congress with a set of recommendations in his address, but the "circumstances seemed inappropriate."[9]

As Tulis explains, the Constitution and the Founders frowned on the idea of presidents communicating directly with the people on policy in an effort to avoid demagoguery, which "leads to constant instability as leaders compete with each other to tap the latest mood passing through the public."[10] Alexander Hamilton and James Madison expressed clearly these thoughts on demagoguery in Federalist Papers 71 and 63. Tulis uses this as a foundation for his argument. Most presidents in the nineteenth century followed the constitutional construct of separation of powers and precedent when using rhetoric to advance legislation and policy goals, focusing that rhetoric on Congress and not the general public. This is so apparent, argues Tulis, that President Andrew Johnson was the exception that proved the rule, and he was impeached in part for violating this principle so egregiously with speeches that were aimed at gaining support for legislative policies.[11]

[8] Tulis, *The Rhetorical Presidency*, 47.
[9] Ibid., 48.
[10] Ceaser, Thurow, Tulis, Bessette, *Rise of the Rhetorical Presidency*, 161.
[11] Tulis, *The Rhetorical Presidency*, 88.

Tulis sees the creation of a second constitution by President Woodrow Wilson that fundamentally redefined the role of the executive and its relationship with the public and the other branches of government, and as a result created problems for the office and the separation of powers intended by the Founders. He argues that, "For Wilson, separation of powers was the central defect of American politics" because it "impeded energy in the executive."[12] Wilson believed that public opinion was more important in governing, and it was the role of the executive to interpret the will of the people. Every president has followed this model since, accounting for and adapting to advances in technology.

Tulis argues that this can often interfere with the deliberative responsibility of the legislature. As an example, he references Lyndon Johnson and Ronald Reagan using public appeals for Congress to pass legislation negatively affecting the deliberative process, perhaps even leading to poorly written or misunderstood laws. The Founders counted on deliberation in the legislative branch to help form good law; a president interfering in that process, as is often the case in the twentieth century and today, can certainly have negative consequences. For Tulis, "Central to this second constitution is a view of statecraft that is in tension with the original Constitution – indeed, is opposed to the founder's understanding of the political system."[13] This new view takes into

[12] Ibid., 119-120.
[13] Ibid., 18.

account factors that weren't around during the eighteenth and nineteenth centuries, including radio, television, and the internet, and "puts a premium on active and continuous presidential leadership of popular opinion" supported in part by the invention of these electronic communication tools.[14]

Some critics of Tulis find fault with the foundational tenant of theory; that is, they argue that presidents in the nineteenth century often did use rhetoric to advance policy goals. Melvin Laracey contends that "fully half of the twenty-two nineteenth-century presidents were actually quite active in communication their public policy positions to the American people."[15] To Laracey, this "calls into question the analyses that have been built on this incorrect empirical claim."[16] He argues that, contrary to Tulis' view that the Founders feared a more direct democracy and public involvement in the policy process, the Antifederalists argued for that exact concept. Laracey points to Herbert Storing, who noted that Antifederalists wanted "to keep representatives directly answerable to and dependent on their constituents."[17] Thomas Jefferson, too, supported this view, as did presidents like Andrew Jackson and others "who saw direct appeals to the public on policy matters as appropriate and even necessary components of the American political system."[18]

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[14] Ibid.
[15] Ibid., 139.
[16] Melvin Laracey, *Presidents and the People*, 1st ed. College Station: Texas A&M University Press, 2002, 158.
[17] Ibid., 159.
[18] Ibid., 160.

Laracey's argument is weakened in a footnote he adds to his research on presidents in the nineteenth century who addressed policy matters. In it he says that "It is true that none of these presidents addressed policy matters on a continuous basis, as is done now."[19] Here, he acknowledges that the twentieth century does, in fact, bring with it a more rhetorical presidency than was generally understood or accepted previously. While presidents in the nineteenth century did speak directly to the public on policy issues, the modern presidency, and its use of rhetoric as an end, has serious implications on the office and the effectiveness of government, and that generally started under Woodrow Wilson.

Several theorists accept the concept of the rhetorical presidency and attempt to better understand in under current political realities and technological advances. For Bruce Gronbeck, the rhetorical presidency is not so much a second constitution developed by Woodrow Wilson, rather, it is an adaptation to a new reality filled with better means of communication that give a president more ways to implement power by reaching a wider audience. Gronbeck argues that "the electronic presidency is fundamentally different from the presidency as it has operated and been experienced in any other epoch."[20] This, however, doesn't take into account the trend toward

[19] Melvin Laracey, "The Rhetorical Presidency" Today: How Does It Stand Up?" Presidential Studies Quarterly 39, no. 4 (2009): 908-31, 926.
[20] Bruce Gronbeck, "The Presidency in The Age Of Secondary Orality", in *Beyond The Rhetorical Presidency*, 1st ed. College Station: Texas A&M University Press, 1996, 31.

presidential rhetoric that started with progressives like Theodore Roosevelt and Woodrow Wilson, before radio became ubiquitous. For Tulis, radio, television, and internet were simply a means to an end. The end, in this case, being the use of rhetoric not only to advance policy but to consider policy advanced solely by speaking about it to the public; rhetoric, in a very real sense, equates to action.

A more astute critique evolves the idea of a rhetorical presidency and attempts to study it in a world of hyper-communication. John Dilulio, who worked under President George W. Bush, provides a compelling first-hand account of a "hyper-rhetorical" presidency, which he called "the rhetorical presidency on steroids," characterized by a fixation or obsession on trying to control public opinion.[21] He infamously described a White House filled with "Mayberry Machiavellis — staff, senior and junior, who consistently talked and acted as if the height of political sophistication consisted in reducing every issue to its simplest, black-and-white terms for public consumption."[22] These White House staffers "routinely elevated political rhetoric over policy substance… and reduced complex issues to talking points."[23] He questions whether President George W. Bush or President Clinton may have been the first to engage in this hyper-rhetorical model, the latter's as a result of the Monica Lewinsky scandal and the

[21] John Dilulio, Jr., "The Hyper-Rhetorical Presidency", in *Rethinking the Rhetorical Presidency*, 1st ed. New York: Routledge, 2012, 203.
[22] John Dilulio, Jr., "John Dilulio's Letter", *Esquire*, Last modified 2007, https://www.esquire.com/news-politics/a2880/dilulio/.
[23] Dilulio, *The Hyper-Rhetorical Presidency*, 202.

former's due to the controversy surrounding the results of the presidential election of 2000.

Both Dilulio and Justin Vaughn accept the fundamental premise of the rhetorical presidency and speculate on its current state. Vaughn, however, declares the rhetorical presidency long dead – perhaps as early as the 1980s. For Vaughn, the rise of cable television, twenty-four-hour news, conservative talk radio, and the internet all contributed to a "highly decentralized media system, one where today an individual essentially can find information sources that cater to their preferences regardless of where they fall on the ideological spectrum. The result today is an electorate that exists within an infinite number of echo chambers."[24]

While these "infinite echo chambers" threaten to drown out rhetoric from the White House, the public still expects leadership from a president even when rhetoric is ineffective in moving legislation. The executive actions that Obama took after the shootings amounted to "a modest, limited set of executive actions" that had a marginal effect at best.[25] This, says Vaughn, is the new reality – a disconnect between what is expected of a president and what the office can actually achieve in such a crowded, noisy arena. Even if a president manages to break through this noise, they are reaching

[24] Justin Vaughn, "The Post-Rhetorical Presidency of Barack Obama", *The Blue Review*, 2016, https://thebluereview.org/obama-post-rhetorical-presidency/.
[25] Michael Shear and Eric Lichtblau, "Obama to Expand Gun Background Checks and Tighten Enforcement," *The New York Times,* January 4, 2016, final edition, https://www.nytimes.com/2016/01/05/us/politics/obama-says-he-will-act-on-gun-control-in-coming-days.html (accessed April 2, 2020).

an ever-polarized population that only listens to news sources with which it agrees and therefore is "immune from persuasion."[26]

The first chapter reviews the concept of the rhetorical, hyper-rhetorical and post-rhetorical presidency by applying it to key policy achievements of presidents Ronald Reagan, George W. Bush, Barack Obama, and Donald Trump, to better understand how each used rhetoric directed at the public to drive their agendas in Congress. By reviewing the rhetorical strategies implemented in each case, and how these strategies evolved with innovations and developments in communication, it becomes apparent that an increase in polarization and a segmented media environment has led to a combination of Vaughn's and Dilulio's hyper-and-post-rhetorical presidencies. Now, the White House focuses almost exclusively on messaging, but that messaging falls largely on echo chambers of partisan media and a divided electorate, both in social media channels like Facebook and Twitter and on media outlets like MSNBC, Fox News, and talk radio.

While the president's bully pulpit may be powerful on media outlets favorable to their ideology or with their followers and supporters on social media platforms, others outside these partisan bubbles, including lawmakers in Congress, are less receptive and the message often fails to create bipartisan legislation. As a result, the fate of a

[26] Vaughn, "The Post-Rhetorical Presidency of Barack Obama."

president's agenda is, perhaps more than ever, in the hands of their party's electoral success in Congress; when their party controls both the House and the Senate, large legislative priorities like tax reform and healthcare must use budget reconciliation to pass. In the absence of these power dynamics, presidents are often forced to rely on executive actions.

As presidential communication developed through the nineteenth and twentieth centuries, Congress, in turn, was forced to adapt to this rhetorical assault from the executive branch, responding in several ways that have changed its deliberative nature. Once the president's televised State of the Union address moved to primetime under Lyndon Johnson, Republicans in Congress began to understand the advantage this gave to the White House and televised their own rebuttals. Opposition responses to the State of the Union have become a tradition ever since, though unlike the president's address, they are not mandated in the Constitution.

The opposition party in Congress developed other ways to control the narrative and counter the rhetoric coming from the White House. Opposition party legislative agendas, like the "Contract with America" created by House Republicans leading up to the 1994 midterm election, became valuable messaging tools for the minority party, further distancing communication between the two branches. Congress began allowing television into hearing rooms and on the Floor of each chamber in 1979, opening the door for rank-and-file members – often relegated to backroom benches of the legislative

process – to develop their messaging with the public outside their districts or states. With a televised Congress, members divided into two separate and distinct groups: those who focused on policy and passing legislation, and those who cared more about self-promotion.[27]

The development of social media added fuel to an exploding rhetorical war between Congress and the White House, with each branch speaking out towards the public instead of towards each other. This evolution, particularly in congressional rhetoric, has had a deleterious effect on the ability of the legislative branch to function, and set into hyper-drive the shift from a hyper-rhetorical to post-rhetorical world, both for presidents and Congress. As Justin Vaughn concludes, even if a president or a member of Congress manages to break through the echo chambers of noise on social media or twenty-four-hour news, their message falls on an ever-polarized electorate that is "immune from persuasion" by anyone who doesn't reinforce their preconceived worldviews.[28]

What do these trends in rhetorical warfare between the Congress and president mean in practice, where party agendas and policy priorities are moved or blocked? By reviewing the evolution of the Motion to Recommit in the House of Representatives,

[27] Timothy E. Cook, "House Members as Newsmakers: The Effects of Televising Congress." *Legislative Studies Quarterly 11,* no. 2 (1986): 203-26. Accessed July 16, 2020. www.jstor.org/stable/439876, 204.
[28] Justin Vaughn, "The Post-Rhetorical Presidency of Barack Obama", *The Blue Review,* 2016, https://thebluereview.org/obama-post-rhetorical-presidency/.

which political theorists consider to be perhaps the most powerful minority party tool that "has a significant effect on the ultimate distribution of power," the consequences of this shift towards rhetoric and messaging becomes apparent.[29]

The Motion to Recommit, or MtR, substitutes the original text of legislation to which it is being offered with and amended version that orders the bill to be reported back to committee, effectively killing it. Once a simple procedural tool for the majority party to amend legislation immediately before putting the bill on the Floor for a vote, the MtR has now turned into a rhetorical weapon used by the minority party in Congress to force difficult votes on fragile majority coalitions and use those votes as ammunition for campaign ads. Rarely passing, these last-minute amendments have become solely messaging tools, and are therefore created for that exclusive purpose. In this one example of political maneuvering, the dramatic effects that this rhetorical evolution has on the governing process become clear.

Throughout its history in the House of Representatives, the motion to recommit with instructions, also known as the "minority's motion," has most often been weakened by the majority party to lessen its effect, particularly as it evolved into a powerful minority messaging tool. In the 117th Congress, the majority party in the House passed a rules package that restricted the use of the motion to recommit so that

[29] Keith Krehbiel, Adam Meirowitz, *Minority Rights and Majority Power: Theoretical Consequences of the Motion to Recommit.* Legislative Studies Quarterly, Vol. 21, No. 2 (2002): 211.

one could no longer be offered with instructions and it would not be debatable. Removing the ability of the minority party to alter the bill, instead only sending it back to committee, the move by Democrats has the effect of weakening its power dramatically.

Chapter three reviews public information, including votes, floor speeches, legislative text, and corresponding campaign ads to better understand political strategies employed by each party on the motion to recommit with instructions. The recent history of the MtR suggests one clear consistency: The Republican party, when in the minority, is more successful in siphoning off votes from the majority party than the Democrats. These votes are often from vulnerable members in swing districts who fear potential attacks by their opponents in the next election. Conditional Party Government theory, developed by John Aldrich and David Rohde, helps explain the dynamics that come into play with the MtR. The ideological cohesiveness of the majority party's coalition helps signal whether a motion to recommit will succeed or fail. For Republicans, average trends show the party has moved further to the right in the House than Democrats have moved to the left.[30] This trend helps explain why Republicans are less likely to break with their party and support MtRs offered by Democrats. Generally, the minority party rarely succeeds in passing the motion to recommit with instructions

[30] Steven S. Smith, Jason M. Roberts, and Ryan J. Vander Wielen. The American Congress, 4-5. Cambridge University Press, 2011. Doi:10.1017/CBO9781139059312.

– even the more successful Republicans only passed their thirty-three percent of the time in the 110th Congress – regardless of how well it is worded or the makeup of the majority party. In these cases, votes against the motion often show up in campaign ads that highlight the member's opposition to popular policies in their districts.

What do these rhetorical changes mean for communication between the two branches and what are the implications of these changes on our governance? Is the increased polarization we see today a symptom of the rhetorical government or a cause? The analysis that follows finds that the rhetorical presidency is now in a post-hyper rhetorical world where the rhetoric of presidents no longer holds the same power it once did. The so-called "bully pulpit" still gives presidents a powerful platform to speak, but that speech is no longer able to penetrate the echo chambers of a partisan media, whether traditional or social. Presidents may still be able to drive the agenda in Congress, but only when their party is in control of both chambers.

Congress finds itself in a similar position. At first trying to adjust to this new rhetorical presidency, the response has been equally disruptive to the deliberative process of the body. Members of Congress may now have huge followings on Twitter or appear nightly on cable news talk shows to build up their public image and following, but, ultimately, they are largely reaching partisan individuals who already share their political views. Even the procedural tools available to them in Congress to pass their policies are not immune to this rhetorical assault. The Motion to Recommit,

once the strongest legislative tool available to the minority party in the House of Representatives, was recently rendered nearly useless by the Democratic party in the House Rules package for the 117th Congress because of the way it has been manipulated in recent decades.

Chapter 1: The Post-Rhetorical Presidency

"If sensible reform of the institution [of the presidency] is ever possible, the key will be found… in restoring the President to his natural place as head of government, and subordinating his awkward role of an itinerant leader of the people."[31] This idea, that is, that a doctrine under which all presidents since Woodrow Wilson have followed is antithetical to the role of the executive as defined in the United States Constitution, lays at the heart of the theory of the rhetorical president, first laid out by James Ceaser, Glen Throw, Jeffrey Tulis, and Joseph Bessette in 1981 and developed more thoroughly by Jeffrey Tulis in his 1987 book, *The Rhetorical Presidency*. The doctrine identifies and explains a change in how presidents viewed the office, first as the of head of government, kept at a distance from the people and communicating directly with Congress to advance his agenda, then as executor of the popular will, speaking to the people to exert maximum influence on the legislative branch. With this fundamental change, "the touchstone of almost all analysis of the presidency today is presidential effectiveness, understood as the long-term ability to accomplish whatever objectives presidents might have."[32] The public, too, judges the success or failure of a president on

[31] James W. Ceaser, Glen E. Thurow, Jeffrey Tulis, and Joseph M. Bessette. "The Rise of the Rhetorical Presidency." *Presidential Studies Quarterly* 11, no. 2 (1981): 169, http://www.jstor.org/stable/27547683.
[32] Jeffrey Tulis, *The Rhetorical Presidency*. Princeton: Princeton University Press, 2016, 12.

his ability to achieve his stated policy goals, particularly those that were highlighted in the campaign.[33]

Since *The Rise of the Rhetorical Presidency* and *The Rhetorical Presidency*, there have been some criticisms and several elaborations of its key arguments and assumptions, particularly with respect to the field of political communications. The elaborations describe a "hyper-rhetorical presidency" focused solely on messaging, where speaking is, in and of itself, considered action. Others contend that we are presently in a "post-rhetorical presidency," where increased polarization and echo chambers of partisan noise drown out rhetoric from the president, rendering it ineffective in achieving legislative policy goals.

This chapter applies the concepts of the rhetorical presidency to specific examples of legislative successes by modern presidents to understand the effects of presidential rhetorical strategies on the legislative process as technologies advanced in communication over the last forty years. Reviewing key policy successes of presidents Ronald Reagan on tax reform of 1986, George W. Bush and the tax cuts of 2003, Barack Obama and the Patient Protection and Affordable Care Act, and Donald Trump and the Tax Cuts and Jobs Act, this chapter examines the rhetorical strategy implemented by each president, accounting for advances in technology that includes twenty-four hour

[33] Charles U. Zug (2018) The Rhetorical Presidency Made Flesh: A Political Science Classic in the Age of Donald Trump, Critical Review, 30:3-4, 4, DOI: 10.1080/08913811.2018.1567983.

news, the internet, and social media, to show that, as the rhetorical presidency evolved to this hyper and then post-rhetorical world, presidential rhetoric is no longer the powerful weapon it was even in the more recent past. The so-called "bully pulpit" has been rendered nearly futile in its ability to move the public and pull together bipartisan support for a policy priority. In the end, the party that controls Congress with a majority in the House, a majority or super majority in the Senate, if necessary, and control of the White House, controls the fate of the president's agenda. In the absence of that power dynamic, the big, comprehensive campaign promises fail to gain the bipartisan support needed to become concrete achievements, and instead are addressed – if at all – through executive actions.

Ronald Reagan and The Tax Reform Act of 1986

Ronald Reagan, considered a master communicator, spent his career in radio, television, and movies perfecting the craft. The Reagan White House often used presidential rhetoric strategically and effectively, achieving significant bipartisan legislative successes, perhaps most notably with tax reform in his second term. As some observed at the time, "Mr. Reagan's adroitness at refashioning the traditional forms of presidential communication stemmed to a large degree from his ability to address the public directly."[34] Leading into what ultimately became the Tax Reform Act of 1986,

[34] Geoffrey Nunberg, "And, Yes, He Was a Great Communicator," *The New York Times*, June 13, 2004, final edition, https://www.nytimes.com/2004/06/13/weekinreview/and-yes-he-was-a-great-communicator.html (accessed March 17, 2020).

"Reagan [hadn't] forgotten how to beam his message over the heads of Congressman to the voters." [35] He enjoyed historically high popularity, "both for his presidency and for any president after five years in office, including Franklin D. Roosevelt," and he intended to use it to achieve one of his major campaign promises: tax reform. [36]

After winning his reelection in a landslide, Reagan spent much of 1985 traveling the country attacking a tax code that he frequently described "runs roughshod over Main Street America."[37] He used national television addresses to the public to decry the tax system, framing reform as "a second American Revolution."[38] At one point in his campaign-style communication strategy, Reagan travelled to Colonial Williamsburg, Virginia, and, speaking in front of the reconstructed capitol there, continued his rhetorical assault on the tax code, comparing this reform effort – and his fight to fix it – to the American Revolution, fought in part because of British taxes on American colonies. In his speech at Williamsburg, he told the crowd:

> The members who spoke in this Capitol said no to taxes because they loved freedom. They argued, 'Why should the fruits of our labors go to the Crown

[35] Ann Reilly and Margaret A. Elliott, "Reagan '86: What Businesses Can Expect," *Fortune Magazine*, January 20, 1986, 74.
[36] Ibid., 74.
[37] Ed Magnuson and Laurence I. Barrett. "MAKING HIS BIG PITCH Reagan's Exhortation on Tax Reform: 'America, Go for It!'," *TIME Magazine*, June 10, 1985, 14.
[38] Ibid.

> across the sea?' In the same sense, we ask today, 'Why should the fruits of our labors go to the capital across the river?[39]

At another speech in Bloomfield, New Jersey, after again tying this effort to the American Revolution and creating a narrative of a bright future ahead once the tax code is reformed, Reagan asked the crowd:

> Will you write your Representatives? You don't have to write the two here, they've already heard you. Write your Representatives, your Senators, and tell them how you feel. It really does mean something in Washington to hear from you -- the mail and the telegrams and the phone calls. Tell them how you feel. And that's great because without you, nothing can be accomplished; but with you, everything is possible.[40]

Turning the reform pitch into a political campaign, like the one he just successfully completed in 1984, Reagan focused on gaining support from the public to move Congress, relying on mass media to spread his charismatic communication skills in speeches from the Oval Office and around the country. Reagan even coined a campaign-style slogan to sell his tax reform agenda: "America, go for it!"[41]

While members from both political parties had been promoting their own tax proposals for years, none gained as much popularity as the one pitched by President

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[39] Ibid.
[40] Ronald Reagan, "Remarks to Citizens in Bloomfield, New Jersey" (speech, Bloomfield, NJ, June 13, 1985), Reagan Library, https://www.reaganlibrary.gov/research/speeches/61385b.
[41] Magnuson and Barrett, "MAKING HIS BIG PITCH Reagan's Exhortation on Tax Reform: 'America, Go for It!'," 14.

Reagan that landed on the evening news and was discussed on the nation's first twenty-four hour news channel, CNN, which at the time spent most of its day showing government affairs like presidential speeches.[42] Congress, however, was more focused on other issues, insisting that "voters were more worried about America's mounting trade woes and the federal budget deficit."[43] In the end, Reagan's message – his rhetorical offensive – resonated with the public and made tax reform a popular issue for members of Congress to support. As a Time cover story noted, "Only a President can effectively lead such a crusade, and perhaps only a President with Reagan's remarkable communications skills."[44]

The White House deployed a rhetorical strategy focused on the public to achieve bipartisan support for one of the president's top campaign promises, recognizing and accounting for the impact that media played in amplifying its messaging. An administration official explained one part of the strategy as "Reagan reinforcing a simple, straightforward idea: tax reform is pro- fairness, pro-family and pro-growth. Tax reform is Reagan.'"[45] The president's rhetoric, strategically aimed at the public to

[42] Lisa Napoli, "Shots Fired. Hilton Hotel: How CNN's Raw, Unfolding Reagan Coverage Heralded the Nonstop News Cycle," *Vanity Fair*, April 27, 2020, https://www.vanityfair.com/news/2020/04/cnns-raw-unfolding-ronald-reagan-coverage-heralded-the-nonstop-news-cycle, (accessed April 28, 2020).
[43] Evan Thomas, Sam Allis, and Barrett Seaman. 1985. "THE PRESIDENT'S HARDEST SELL Congress Grumbles That Trade, Not Tax Reform, Is the Real Issue." *TIME Magazine*, 29.
[44] Magnuson and Barrett, "MAKING HIS BIG PITCH Reagan's Exhortation on Tax Reform: 'America, Go for It!'," 14.
[45] Ibid.

influence both parties in Congress, achieved bipartisan success for his agenda on one of his top priorities, rewriting the tax code for the next thirty years.

George W. Bush and the Economic Growth and Tax Relief Reconciliation Act

President George W. Bush began selling tax reform to the public during the presidential campaign of 2000, as early as the primaries. As the country faced a budget surplus, Bush told viewers during a primary debate with Sen. John McCain (R-AZ) that his pledge to lower taxes was "not only no new taxes," a reference to his father's failed commitment not to raise taxes, but "this is tax cuts, so help me God."[46] His argument to the public for tax cuts centered on four points. First, a budget surplus would result in more government spending and lead to bigger government. He also argued that cutting taxes was simply a refund because the people had "overpaid the government, leading to surplus."[47] Bush also conveyed the moral obligation of the nation to give the people back their money, saying that it was the right thing to do. Lastly, acknowledging a potential recession on the horizon, he considered his tax cut plan to be economic stimulus.

Throughout the campaign and early in his presidency, Bush spoke to the public via campaign speeches, debates, and, once president, through comments to the press or

[46] Richard L. Berke, "In a Fierce Debate, Bush Promises to Cut Taxes, Calling to Mind His Father," *The New York Times*, January 7, 2000, final edition, https://www.nytimes.com/2000/01/07/us/in-a-fierce-debate-bush-promises-to-cut-taxes-calling-to-mind-his-father.html (accessed March 23, 2020).
[47] David A. Crockett. "George W. Bush and the Unrhetorical Rhetorical Presidency." Rhetoric & Public Affairs 6 (3): 465–86, 474.

national addresses, often focusing on the importance of tax cuts. Once the economic slowdown of 2000 became more apparent, his plan became more popular as an option for stimulating the economy. During a meeting with business leaders occurring at the exact time that Federal Reserve Chair Alan Greenspan announced an interest rate cut, a sure sign that the economy was in recession, Bush told reporters "I think it's really important for members of Congress to understand that the tax relief plan I've put forth is an integral part of economic recovery."[48] Later, after unveiling his $1.6 trillion plan and promoting it over plans proposed by, among others, Democrats in Congress, he spoke on the White House lawn to continue his sales pitch to the American people and, indirectly, to Congress. Bush told the public that "Some in Congress view this as an opportunity to load up the tax relief with their own vision," but Bush wanted members of Congress and the American people to hear his message loud and clear: This is the right-size plan, it is the right approach, and I'm going to defend it mightily."[49]

As David Crockett noted in his analysis of President Bush's rhetorical strategy on his tax cuts, "The White House apparently desired little deliberation in Congress on the merits of Bush's tax proposal… dangerous considering the close partisan division in Congress" but the administration "made its opposition very public in classic rhetorical

[48] David E. Singer, "THE RATE CUT: THE REACTION; Bush Cheers Fed's Action and Tax Cut," *The New York Times*, January 4, 2001, final edition, https://www.nytimes.com/2001/01/04/business/the-rate-cut-the-reaction-bush-cheers-fed-s-action-and-tax-cut.html (accessed March 23, 2020).
[49] Lori Nitschke, "*Tax Plan Destined for Revision*," CQ Weekly, February 10, 2001, http://library.cqpress.com.proxy1.library.jhu.edu/cqweekly/document.php?id=weeklyreport107-000000206896&type=query&num=Tax+Plan+Destined+for+Revision. (accessed March 22, 2020).

presidency style."[50] In his first address to a joint session of Congress, Bush used the opportunity to highlight his arguments for tax reform, which included his populist point about the government owing surplus money to the taxpayers while decrying big government.[51] Speaking directly to the people and in front of members of Congress, he announced that "The people of America have been overcharged, and, on their behalf, I'm here asking for a refund."[52]

As other plans were being proposed, ones Bush at the time called "too big" or "too small," the White House was able to push House Republicans to move his plan to the floor for a vote.[53] The vote in the House received support from 10 Democrats, most of whom represented competitive districts. Bush then continued his campaign- style promotion of the tax plan in visits to Senate Minority Leader Tom Daschle's (D-SD) home state in March, among visits to other key states, "to gin up public support for the tax cut, paying particular attention to states with potentially vulnerable Democratic senators."[54] Crockett notes that Bush, during a speech in Kalamazoo, Michigan, presumably an attempt to gain support from its two Democratic senators, told the crowd that "Oftentimes what I try to say in Washington gets filtered and sometimes my

[50] David A. Crockett. "George W. Bush and the Unrhetorical Rhetorical Presidency," 478.
[51] George W. Bush, "Presidential Economic Address" (speech, Washington, DC, February 27, 2001), CSPAN, https://www.c-span.org/video/?162715-1/presidential-economic-address.
[52] Ibid.
[53] Lori Nitschke, "*Tax-Cut Bipartisanship Down to One Chamber*," CQ Weekly, March 10 2001, http://library.cqpress.com.proxy1.library.jhu.edu/cqweekly/document.php?id=weeklyreport107-000000219718&type=query&num=Tax-Cut+Bipartisanship+Down+to+One+Chamber.&. (accessed March 22, 2020).
[54] David A. Crockett. "George W. Bush and the Unrhetorical Rhetorical Presidency," 479.

words in Washington don't exactly translate directly to the people… So I've found it's best to travel the country…."[55] Crockett considers these to be "words that would make [President Woodrow] Wilson proud… because deliberation with Congress would not provide what he wanted."[56]

Ultimately, a compromised, bipartisan plan was negotiated in the Senate and signed into law, gaining the support of twelve Democratic senators and twenty-eight Democrats in the House. Using rhetoric aimed at the public, and speaking in geographically strategic locations, President Bush was able to pass a bipartisan tax cut plan early in his first term after a particularly divisive election result in 2000. While not exactly the plan Bush had originally proposed and supported, his rhetoric, directed at the people with the intention to move Congress, helped push the issue front-and-center and pass $1.35 trillion worth of tax cuts that included his signature proposal, a 33 percent limit on the highest tax bracket. His strategy was so effective that, ten years after his tax cuts were passed and after he left office, most of them were renewed by a Democratic president.

Barack Obama and the Patient Protection and Affordable Care Act

President Barack Obama was elected president in part because of his soaring rhetoric during the 2008 election, when the United States was facing an economic

[55] Ibid.
[56] Ibid., 480.

recession unlike any the country had seen since the Great Depression. The Obama White House understood the role of the rhetorical president and developed it to its most modern form that realized the visual component of messaging and new mediums like social media. Until this point, scholars understood the rhetorical presidency in terms of speeches; however, "the continual increase of mass media's influence has allowed the rhetorical presidency to escalate, as presidents can make more and more direct appeals to the public through a variety of media."[57] Obama, more than any president before him, was able to harness the power of this media, most notably in the form of social media, to speak to the public about policy.

Democrats learned from President Bill Clinton a valuable lesson after the health care reform failures of his administration. As Clinton reflected after its defeat, "I was totally absorbed in getting legislation passed [that I] totally neglected how to get the public informed."[58] Following presidents before him like Reagan and Bush, Obama learned Clinton's lesson and took to the country, albeit in sometimes more modern fashion, to promote health care reform and push Congress to act.

While Obama mostly followed a script written by his predecessors for promoting his policy priorities in speeches around the country or from the White House, he revolutionized presidential communication to deliver rhetoric directly to the people,

[57] Megan D. McFarlane, "Visualizing the Rhetorical Presidency: Barack Obama in the Situation Room," *Visual Communication Quarterly*, 23 (1): 4, doi:10.1080/15551393.2015.1105105 (accessed April 4, 2020).
[58] Lawrence R. Jacobs and Robert Y. Shapiro, *Politicians Don't Pander: Political Manipulation and the Loss of Democratic Responsiveness* (Chicago: University of Chicago Press, 2000), 284.

and more directly to the groups of people his message was designed specifically to influence. This included focusing much of his messaging on social media, hosting discussions on Facebook and LinkedIn, promoting health care reform on Twitter and other social media sites to capitalize on his strong support from younger voters. In the year after his election, the Obama White House held a Facebook live-stream discussion while meeting with physicians to discuss health care, and posted policy messages on Facebook and Twitter. The president used social media sites like LinkedIn to answer questions from small businesses owners and employees on health care reform.

In a public appearance at a children's hospital in Washington, DC, while facing downward trending numbers on his performance and a barrage of negative press by conservative media, the president defended his efforts and pushed Congress to act. Tying health care reform to the economic recovery, Obama argued to the public that the health care system was "breaking America's families, breaking America's businesses and breaking America's economy, and we can't afford the politics of delay and defeat when it comes to health care, not this time, not now."[59] The president made clear to Senate Democrats who held a supermajority at that time that he wanted to see action, going so far as to publicly give the Senate Finance Committee a deadline for action.[60] That same week, in July of 2009, the president launched "a full-court press on health

[59] Huma Khan, Nitya Venkataraman and John Hendren, "Obama Blasts GOP on Health Care: This Isn't About Me," *ABCNews*, July 20, 2009, (accessed April 4, 2020).
[60] Patrick O'Connor and Carrie Budoff Brown, "That August Deadline? Never Mind," *Politico*, July 22, 2009, (accessed April 4, 2020).

care reform, with an interview on PBS… and a prime-time press conference."[61] Through passage of the bill in March 2010, Obama was giving health care rallies around the country. In one of these rallies at George Mason University, the president urged attendees to help him pass reform now, and "stand with me like you did three years ago and make some phone calls and knock on some doors, talk to your parents, talk to your friends… [and] make your voices heard so that they can hear you on the other side of the river," referring to Washington, DC.[62]

On September 9, 2009, President Obama gave a speech to a joint session of Congress that focused specifically on the topic of health care reform. The speech, which drew over 32 million viewers, strongly linked reforming health care with economic recovery, connecting it to the burden that health care was placing on taxpayers at the time.[63] The speech received mixed reviews, generally on party lines. Republicans and conservatives called the speech "alienating and preachy" and "slithering toward government takeover."[64] While his speeches were generally given in blue states like Virginia and Wisconsin, both of which he won in 2008 and had Democratic Senators at the time, Obama made several attempts to gain support from Republicans by speaking

[61] Kahn, Venkataraman and Hendren, "Obama Blasts GOP on Health Care: This Isn't About Me."
[62] Barack Obama, "President Obama's Health Reform Rally Remarks" (speech, Fairfax, Virginia, March 10, 2010) Kaiser Health News, https://khn.org/news/obama-virginia-health-reform-remarks-transcript-document/.
[63] Brendan Morrow, "Donald Trump Gets Way Worse TV Ratings than Barack Obama," Showbiz CheatSheet, April 28, 2018, final edition, (accessed April 5, 2020).
[64] Benjamin Carlson, "The Comprehensive Guide to Reactions to Obama's Speech," The Atlantic, September 10, 2009, final edition, (accessed April 13, 2020).

to the public. In one example, on January 29, 2010, the president visited the Open Forum at the Republican House's Issue Caucus. In a televised event, he spoke for nearly ninety minutes with an audience of Republicans, answering questions and explaining the health care reform package that Democrats in Congress were putting together.[65]

The Obama White House learned other lessons from President Clinton's failures on health care reform in the 1990s. They delegated the task of drafting the legislation to Congress, understanding the differences in policymaking in the House and the Senate. The White House then worked with stakeholders, including insurers and hospitals, to secure their input and potentially support, or, at the very least, to stop them from advocating against reform in Washington.

Even after all the public effort for bipartisan support, the president was unable to gain any votes from Republicans in Congress for the final bill. Republicans made it clear to the White House that they would not support the Democrat's health care reform effort under any circumstances.[66] With a majority in the House and a Senate super-majority in 2009 – which later turned into a 59-seat majority with election of Republican Scott Brown in Massachusetts – Democrats needed only to keep their party in line to pass this major legislation the through reconciliation process.

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[65] Barack Obama, "Open Forum at GOP House Issues Conference" (speech, Baltimore, Maryland, January 29, 2010), American Rhetoric, https://www.americanrhetoric.com/speeches/barackobama/barackobamagophouseissuesconference.htm.

[66] Carl Huse and Jeff Zeleny, "Democrats Seem Set to Go It Alone on a Health Bill," *The New York Times*, August 18, 2009, final edition, (accessed April 13, 2020).

President Obama's rhetorical strategy for the Affordable Care Act focused on framing health care reform as part of the response to the economic recession, which went a long way in successfully moving the bill through Congress.[67] Starting early in his campaign, like George W. Bush before him on the issue of tax reform, Obama hammered his message to the public in speech after speech. He expanded the forum of rhetoric dramatically by focusing so much of his efforts on social media sites like Twitter and Facebook, where he could speak directly to the American people. As a result of this strategy, expectations were raised and passing some form of health care reform became essential for Democrats in 2010.

Ultimately, however, in an increasingly partisan environment and with a polarized Congress, his rhetoric could only be effective within his own party. Juxtaposing ideologically opposed media outlets like Fox News and the Wall Street Journal editorial pages, which generally lean more conservative, and those of MSNBC and The New York Times editorials, which leans more liberal, the narrative on the Affordable Care Act could not have been more different. These competing narratives created echo chambers appealing to different audiences, one generally supportive of President Obama and the Democrat's plans for health care reform, and one in opposition, supporting the Republican Party's opposition to the bill. The media outlets

[67] Betsy Leimbigler and Christian Lammert. "Why Health Care Reform Now? Strategic Framing and the Passage of Obamacare." *Social Policy & Administration* 50 (4): 467–81. doi:10.1111/spol.12239.

went so far as to call the legislation by different names as one point, with conservative media using the moniker of Obamacare and liberal media calling it the "Health Care Reform" or the "Affordable Care Act."[68] In many cases, "Partisan journalists… label[ed] their opponents as extremists…," each defining the other side as far left or far right, insincere and deceitful."[69] In this highly polarized environment, where liberals only listen to liberal media and conservatives only to conservative outlets, it's hard to imagine how a Republican in the House or Senate could ever support a proposal that is so staunchly opposed by their own party and the partisan media that speaks to voters in their homes every night on primetime television and throughout the day on social media.

Donald Trump and the Tax Cuts and Jobs Act

Donald Trump has, perhaps unintentionally, ushered in the current state of the rhetorical presidency as defined by Jeffrey Tulis. A prolific Tweeter, both before and in office, Trump consistently took his message to the public on nearly every major policy issue, from immigration to health care. This constant, daily rhetoric aimed at the public realizes one of the central concerns of Tulis in *The Rise of the Rhetorical Presidency*: Now more than ever, "presidential speech and action increasingly reflect the opinion that speaking *is* governing."[70] On the president's plans to build a wall on the southern

[68] Jeasik Ha, "Health Care Reform' vs. 'ObamaCare': Partisan Framing of FOX, MSNBC, NYT, and WSJ." 2012. Conference Papers -- International Communication Association, 11.
[69] Ibid., 20.
[70] Ceaser, Thurow, Tulis, and Bessette, "The Rise of the Rhetorical Presidency," 159.

border with Mexico, he frequently claimed that his administration will have completed 450 miles of new border wall by the end of 2020; in reality, however, most of the projects involve replacing old barriers or adding secondary fencing rather than creating entirely new barriers.[71] By making this claim so frequently, many – mainly his supporters – end up believing that it is true.[72]

In an effort to pass his biggest legislative achievement in office, tax reform, President Trump held political rallies across the country and tweeted prolifically on the subject, pushing his base and the public to move a plan through Congress. The White House added a new element to the rhetoric of the president and in support of tax reform: Super PACs spending millions to amplify the president's message on television, internet, and radio ads.[73] Like President Obama's Affordable Care Act strategy, the Trump White House deferred to congressional Republicans on developing the bill. In this effort, however, from the beginning there was little attempt by the White House and Republicans in Congress to gain bipartisan support.

In his campaign to become president, "Trump promised that his decades in the real-estate business would make him an especially able negotiator, but on health care, taxes, and immigration, he hasn't much bothered to trade horses with Democratic

[71] Gretchen Frazee, "Trump administration is promising a 'new' border wall. The reality is less clear," *PBS NewsHour,* October 29, 2019, final edition, (accessed April 22, 2020).
[72] Caroline Orr, "Why do Trump's biggest fans still believe him when he lies? The answer is in the human brain," *Independent*, February 15, 2019, final edition, (accessed April 22, 2020).
[73] Ed Rogers, "Trump's Noisy Tweets Haven't Derailed Tax Reform," *Washington Post*, October 24, 2017, final edition, (accessed April 21, 2020).

lawmakers."[74] While Republicans in Congress were developing the 2017 tax reform legislation, Trump's sometimes daily tweets about tax reform seemed designed to only build support among his base, rarely extending an opportunity for Democrats to be involved in the process. In one tweet, Trump wrote that "Democrats don't want massive tax cuts – how does that win elections? Great reviews for Tax Cuts and Reform Bill."[75] In another tweet, Trump said "Republicans Senators are working hard to pass the biggest Tax Cuts in the history of our Country… Obstructionist Dems trying to block because they think it is too good and will not be given the credit!"[76]

On November 29, 2017, President Trump spoke in a televised address on tax reform in St. Charles, Missouri. While the state had one Democratic senator in Claire McCaskill, who was up for a difficult reelection, instead of attempting to persuade her to support the tax reform proposal, a tactic utilized by presidents before him, he invited her opponent, Josh Hawley, on the stage and promoted his candidacy, saying "he is going to be a great senator… and he wants to see a major tax cut… and your current senator does not want to see a tax cut… she wants your taxes to go up."[77]

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[74] John Dickerson, "What If the Problem Isn't the President—It's the Presidency?" *The Atlantic*, May 2018, final edition, (accessed April 22, 2020).
[75] Donald Trump, Twitter Post, September 28, 2017, 7:55 AM, https://twitter.com/realdonaldtrump/status/913371663789625344?lang=en.
[76] Donald Trump, Twitter Post, December 1, 2017, 6:21 AM, https://twitter.com/realdonaldtrump/status/936555753946705920?lang=en.
[77] Donald Trump, "Remarks by President Trump on Tax Reform" (speech, November 20, 2017, St. Charles, Missouri), The White House, https://www.whitehouse.gov/briefings-statements/remarks-president-trump-tax-reform-2/.

In his speeches across the country promoting tax reform, and in many of his tweets, the president stuck to a strategy focused on rallying his base and attacking Democrats as obstructionists who want to raise taxes. The strategy of attacking Democrats while trying to pass major legislative reform "suggests, then… that Trump is less concerned about garnering bipartisan support for this bill and is instead focused on solidifying ideological divides between his supporters and those who oppose him."[78] It also suggests a continuation of the campaign as never seen before. As presidential campaigns transitioned from William McKinley's front porch to arenas and stadiums filled with thousands of supporters across the country, selling policy as a candidate became the only strategy left once in office. As Tulis notes in *The Rhetorical Presidency* in 2017, "The blurring of campaigning and governing has been a long-term pathology of the rhetorical presidency, but Donald Trump did not simply import techniques of campaigning into the governing phase: he continued the actual campaign past inauguration…."[79] The Trump White House, unlike Obama's before, perhaps understood the new realities and the limits of the rhetorical presidency in a polarized and bitterly partisan country.

The Tax Cuts and Jobs Act passed with no bipartisan support, even from centrist Democrats like Sen. Joe Manchin, who was facing a difficult reelection in a state Trump

[78] Michele Lockhart, *President Donald Trump and His Political Discourse: Ramifications of Rhetoric Via Twitter*, Taylor & Francis Group, 2018. ProQuest Ebook Central, 44.
[79] Tulis, *The Rhetorical Presidency*, 230.

won by over 40 points. Manchin said later that he "was an easy pick up… if they had just made an effort."[80] The effort, however, was ultimately unnecessary; Republicans had the numbers to pass the bill through reconciliation and didn't need to negotiate with Democrats to gain their support. The president's rhetoric was merely a tool to rally the support of his base, who was already supportive of the legislation, and use the reform effort as a campaign message for upcoming elections.

Conclusion

While the idea of the rhetorical presidency is still very real in the minds of presidents and presidential candidates, the realities suggest the end of an era where the White House can will their legislative priorities through a bipartisan Congress in determined, campaign-style speeches around the country, television addresses from the Oval Office, or even tweet-storms from their iPhones. As the nation became more polarized, "an infinite number of echo chambers" developed, where "the average Republican today is more conservative, the average Democrat is more liberal, the number of self-identified moderates continues to shrink, and the ideological distance between the median voter in each major party is greater than it has been in decades."[81] This has created a new dynamic for presidents and their communication teams that

[80] Edward-Isaac Dovere, "I was an Easy Pickup: How Trump Lost Manchin on Taxes," *Politico*, December 19, 2017, final edition (accessed April 22, 2020).
[81] Justin Vaughn, "The Post-Rhetorical Presidency of Barack Obama", *The Blue Review*, 2016, https://thebluereview.org/obama-post-rhetorical-presidency/.

relies on a majority in Congress to pass anything significant that is not crisis-related, like tax cuts or health care reform.

The Reagan White House successfully used campaign-style speeches and rhetoric in strategic locations to gain bipartisan support of his tax reform agenda. This strategy worked in a time when bipartisan compromise was still understood to be part of the governing process, and his tax reforms essentially lasted three decades. The Bush White House followed suit and took tax reform on the road, speaking around the country in speeches aimed at gaining bipartisan support and moving Congress to pass a bill. By the time Obama came into office, the political realities were different and bipartisan reform was more difficult on issues as polarizing as health care reform. While attempting to move to the middle and include Republicans in the process, he used rhetoric that was broad and inclusive, aiming to tie health care to economic health to gain bipartisan support. Ultimately, this strategy succeeded only because Democrats had the numbers in Congress to pass the bill without any Republican support.

For President Trump, his rhetoric was directed nearly exclusively at his base with messages that were less than appealing to Democrats. Opportunities to gain bipartisan support of vulnerable Democrats in the Senate were ignored by the president, who instead sought to cast Democrats as obstructionists who wanted Americans to pay more taxes. Again, this strategy succeeded only because Republicans

had enough members in each chamber to pass their own plan with no input from the minority party.

Presidential communications since Woodrow Wilson, which adapted to technological advances that included radio and talk radio, television and twenty-four-hour news, and the internet and social media, found these advances irresistible opportunities to go around Congress and speak directly to the people. Revolutionized in presidential campaigns, where the candidate who understands how to use the latest technology most effectively is usually the one who ends up in the White House, presidential communications came to rely on these advances to a point where other strategies like bipartisanship were perhaps neglected. Theorists may find value in spending time better understanding the potential implications of a White House that no longer expects any bipartisan support for their biggest campaign promises.

Rendered impotent by a polarized nation that only listens media that reinforces its own political views, the bully pulpit no longer has the power to express popular will and move Congress unless that Congress is controlled by the president's party. In those circumstances, the rhetorical presidency, at least in its current form under President Trump, can still be considered a powerful weapon. One only needs to look at former senators Jeff Flake (R-AZ) and Bob Corker (R-TN), who clashed with the president and as a result lost the support of their party's base, forcing them to retire from politics. It appears the rhetorical presidency in a post-rhetorical world has devolved to simply

reinforcing the strength of the president as merely the itinerant leader of his party, and not of the people.

Chapter 2: A Rhetorical Congress

The United States has witnessed subtle yet consequential changes in how presidents and the Congress set the agenda and communicate with the American people. Presidential rhetoric on policy is longer directed towards Congress, as it had traditionally been in the nineteenth century, but instead focused on the people to exert maximum influence on the legislative branch. The executive office shifted from its role as head of government, kept at a distance from the people and communicating directly with Congress to advance a policy agenda, to the executor of the popular will, strategically using the so-called bully pulpit to influence congressional policymaking. Congress, conversely, enjoyed a more constitutionally intimate relationship with rhetoric, directed both internally through the deliberative process but also in dialogue with the public, but was forced to adapt to this new dynamic while both branches of government adapted to new communication technologies, fine tuning messaging to the public and embracing new ways to amplify the voices of individual members and the opposition party as a whole.

The Founding Fathers considered deliberation to be an essential part of the legislative process for Congress, and, as representatives were elected directly by the people, rhetoric played an integral part in the functioning of the House of Representatives. In the *Federalist Papers*, Madison describes a legislative branch where members "dwell among the people at large… the nature of their public trust implies a

personal influence among the people."[82] *Federalist Paper* No. 52, in defending the concept of the House of Representatives, explains that "it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the [House of Representatives] should have an immediate dependence on, and an intimate sympathy with, the people."[83]

As technology developed, Congress and presidents adapted to new means of communication and adapted to each other. As a result of dramatic advances in communication technology throughout the twentieth and twenty-first centuries, including the development of twenty-four-hour news and social media, the strategic use of rhetoric in Congress evolved as a necessary response to growing threat of the rhetorical presidency. Congress, however, can rarely capture the attention received by presidents. Each of these factors influenced the ability of Congress to function and its role in the policy process.

This article applies the concepts of Tulis' rhetorical presidency to Congress to better understand its effects on the deliberative nature of the legislative branch. As the executive branch adapted to advances in communication, the response by Congress fundamentally changed how the branch functions. By evaluating several forms of

[82] James Madison, *Federalist* No. 49, in *The Federalist Papers*, ed. (Washington: Library of Congress)
[83] James Madison or Alexander Hamilton, *Federalist* No. 52, in *The Federalist Papers*, ed. (Washington: Library of Congress)

rhetorical expression by the opposition party in Congress and individual members, including legislative agendas, rebuttals to the president's State of the Union Address, televised congress, social media and a polarized, twenty-four-hour news, this article seeks to determine the relationship between a rhetorical presidency and a rhetorical Congress, and potential effects of a Congress increasingly more focused on messaging to win elections.

The Rhetorical Presidency

Tulis argues that the Founders put in place constitutional constraints to set the presidency at a distance from the people and popular will; unlike the legislature, presidents are elected by the electoral college, not the popular vote. Tulis believes that the Founders intended the presidency "to be representative of the people, but not merely responsive to popular will."[84] As Tulis explains, the Constitution and the Founders frowned upon the idea of presidents communicating directly with the people on policy in an effort to avoid demagoguery, which "leads to constant instability as leaders compete with each other to tap the latest mood passing through the public."[85] Alexander Hamilton and James Madison expressed clearly their thoughts on demagoguery in *Federalist Papers* No. 63 and No. 71.

[84] Jeffrey Tulis, *The Rhetorical Presidency*. Princeton: Princeton University Press, 2016, 39.
[85] Ceaser, Thurow, Tulis, Bessette, *Rise of the Rhetorical Presidency*, 161.

Tulis offers his own concerns with a rhetorical presidency, observing that it can often interfere with the deliberative responsibility of the legislature. The Founders counted on deliberation in the legislative branch to help form good law; a president interfering in that process by appealing to the public, as is often the case in the twentieth century and today, can have negative consequences. As an example, he references Lyndon Johnson and Ronald Reagan using public appeals for Congress to pass legislation which he believes negatively affected the deliberative process, perhaps leading to poorly written or misunderstood laws.

Tulis considers another consequence of the rhetorical presidency to be the necessity of the legislative branch to respond. He observes that "Television and radio networks now regularly provide for congressional response – actually, opposition party response – to presidential speeches, including the State of the Union Address."[86] For Tulis, "[c]entral to this second constitution is a view of statecraft that is in tension with the original Constitution – indeed, is opposed to the founder's understanding of the political system."[87] This view takes into account factors that weren't around during the eighteenth and nineteenth centuries, including radio, television, and the internet, and "puts a premium on active and continuous presidential leadership of popular opinion" supported in part by the invention of these electronic communication tools.[88] Tulis

[86] Tulis, *The Rhetorical Presidency*, 178.
[87] Ibid., 18.
[88] Ibid., 18.

concludes that, one consequence of the rhetorical presidency is that "the pace of policy development follows less the rhythms of Congress and more the dynamic of public opinion."[89]

Joseph DiIulio and Justin Vaughan take Tulis' rhetorical presidency to its most logical current form, where hyper rhetoric became the dominant form of governing by a White House obsessed with public opinion and its ability to manipulate it to achieve policy goals or, in the absence of those accomplishments, to create an illusion of accomplishment. This is a key difference between a rhetorical presidency and a rhetorical congress: The president can unilaterally issue executive orders and make definitive statements of action and claim success, whether effective or not, while Congress must pass legislation, often through compromise.

DiIlulio, who served as Director of the White House Office of Faith-Based and Community Initiatives under President George W. Bush, details the influence of mass media and communications on a White House obsessed with political optics and public opinion and identifies several problems that develop as a result. Applying this concept to Congress, where bipartisan compromise is often discarded for political messaging and maneuvering, doesn't take much imagination. When rhetoric becomes both the means and the end, bipartisan legislative policy outcomes are less likely and, in some

[89] Ibid., 178.

ways, less desirable for the parties. Individual members become more interested in messaging and rhetoric to build support with the party base and drive fundraising.

Congressional Response to the State of the Union Address

The Constitution outlines two opportunities for a president to communicate a position on policy and legislation. Article 1, Section 7 gives the president the power of the veto and affords the office a veto message that outlines "his objections to the House in which the bill shall have originated, who shall enter the objections at large on their journal, and proceed to consider it."[90] The second opportunity is provided in a State of the Union: "He shall from time to time give to the Congress information on the State of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient."[91]

The State of the Union became televised under President Harry Truman in 1947, providing the president a constitutionally-mandated opportunity to speak directly to the people, now through the power of television, in an annual address to Congress. When President Lyndon Johnson moved the address to primetime, Congress, understanding the advantage this afforded to a president, adapted. In 1966, Senate Majority Leader Everett Dirksen (R-IL) and House Minority Leader Gerald Ford (R-MI) responded to President Johnson's now-primetime State of the Union with an official 30-

[90] U.S. Const. art. I, § 7.
[91] U.S. Const. art. II, § 3.

minute televised rebuttal to the nation, which aired five days later.[92] The response outlined the opposition party's position on issues ranging from foreign policy, where Senator Dirksen described the Vietnam War as "grim, bloody and costly business," to domestic policy, including civil rights and inflation.[93] Opposition responses have been a tradition ever since. Tulis notes that these rebuttals, which are clearly not mandated under the Constitution, are "beamed to the people over the head of the president… [creating] the very real prospect of our two political branches talking past each other to a vast amorphous constituency."[94]

Joseph Wysocki considers the impact of these rebuttals on congressional rhetoric and deliberation to be significant. He notes that these opposition speeches reflect "current rhetorical practice norms within the institution of Congress" and are "one of the most public, or as Tulis would say, 'popular,' instances of congressional rhetoric."[95] Wysocki concludes that if the speeches given in response to a State of the Union are not themselves deliberative, they could, in a very real sense, "undermine deliberation in the institution."[96] Wysocki identifies the true value of the rebuttal speech: its electoral function. While the president's State of the Union is a function of governing, or at least is outlined in the Constitution to be part of the governing process and, at least in theory,

[92] "Opposition Response to the State of the Union Address." Senate.gov. Accessed July 14, 2020.
[93] Ibid.
[94] Tulis, *The Rhetorical Presidency*, 178.
[95] Joseph Wysocki, *Rhetorical Practice in Congress: A New Way to Understand Institutional Decline*, PhD diss., Baylor University, 2013. Waco, TX: Baylor University, 2013, 52.
[96] Ibid.

directed at Congress to address policy issues prioritized by the administration, rebuttals are addressed to the American people, a more direct appeal to the population.[97]

A Congressional Research Service report describes the "opposition's agenda" (that is, the State of the Union rebuttal) explicitly in campaign terms, identifying it as an explanation of "what the policy agenda would be if the opposition party controlled the White House."[98] The success of these opposition-party responses can vary, but studies show that the effectiveness of a president's State of the Union in boosting polling numbers can be mitigated by an effective response.[99] As the country grows more polarized, these speeches are increasingly given in an environment of what Justin Vaughn considers to be "infinite echo chambers," where audiences view rhetoric in partisan terms through partisan media.[100]

In 2014, four Republicans responded to President Barack Obama's State of the Union Address, and in 2018, Democrats chose several members of Congress to respond to President Donald Trump. These types of opposition responses, providing multiple members of Congress time to speak, reflect varying viewpoints within the party and, more importantly, strategic decisions to speak to different audiences within the

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[97] Ibid., 59.
[98] U.S. Library of Congress, *Congressional Research Service*, The President's State of the Union Address: Tradition, Function, and Policy Implications, by Colleen Shogun and Thomas H. Neal, 2012.
[99] Costas Panagopoulos, "Polls and Elections: Firing Back: Out-Party Responses to Presidential State of the Union Addresses, 1966-2006." *Presidential Studies Quarterly* 41 (3), 2011: 612. doi:10.1111/j.1741-5705.2011.03889.x.
[100] Justin Vaughn, "The Post-Rhetorical Presidency of Barack Obama", *The Blue Review*, 2016, https://thebluereview.org/obama-post-rhetorical-presidency/.

electorate. A Time article written after the 2018 response by Democrats perhaps best captures the reality of these types of responses:

> The chorus of liberal responses may also reflect an increasingly fractured media climate, in which more and more voices are competing for attention on different platforms. The response to the State of the Union originally started as a way for the opposition party to match the President's uninterrupted television airtime on the major networks. Yet today there are so many separate channels and media platforms that the competitive advantage has waned.[101]

Opposition Party Legislative Agendas

An opposition party's legislative agenda, often developed and made public leading up to a midterm election, provide Congress with another opportunity to control the narrative and identify priorities and messaging for the party. Perhaps the most famous minority party legislative agenda, Contract with America gave Republicans a unique and valuable messaging tool to win back control of the House for the first time in forty years. The Contract with America, developed by House Minority Whip Newt Gingrich (R-GA) and Rep. Dick Armey (R-TX), coincided with the rise of conservative

[101] Charlotte Alter. 2018. "'Out of Many, One.' The Democrats Had 5 Very Different Rebuttals for Donald Trump's State of the Union." Time, January, 1. http://search.ebscohost.com.proxy1.library.jhu.edu/login.aspx?direct=true&AuthType=ip,shib&db=asn&AN=127709696&site=ehost-live&scope=site.

talk radio. This platform quickly became an important part of the communications strategy for Republican House leadership in promoting the agenda, giving them the ability to "reach their base with a message and learn how voters around the country felt about key issues."[102]

The Contract with America proposed to the American public major reforms to how government operated, promising to pass this legislative agenda on the first day of the new Congress if they won the majority.[103] The reforms included balancing the budget, anti-crime measures, term limits on career politicians, tax credits, and other conservative proposals. On April 7, 1995, after the House passed the Contract with America that the Republican party ran on leading up to the 1994 midterms, newly-minted Speaker of the House Newt Gingrich gave a nationally-televised address characterized by the Washington Post as "extraordinary… with all the trappings of a presidential speech."[104] Most of the bills comprising the Contract died in the Senate, however, even with the recent Republican takeover that could be attributed to its messaging. A Republican Senate aide later described the legislative agenda as "a

[102] Brian Rosenwald, "They Just Wanted to Entertain." *The Atlantic*, August 21, 2019. Accessed July 15, 2020. https://www.theatlantic.com/ideas/archive/2019/08/talk-radio-made-todays-republican-party/596380/.
[103] Newt Gingrich, Richard K. Armey, Ed Gillespie, and Bob Schellhas. Contract with America: The Bold Plan by Rep. Newt Gingrich, Rep. Dick Armey and the House Republicans to Change the Nation. New York: Times Books, 1994.
[104] Eric Pianin and Kenneth J. Cooper, "Gingrich: Contract' Is Only a Start." *The Washington Post*, April 8, 1995. Accessed July 17, 2020. https://www.washingtonpost.com/archive/politics/1995/04/08/gingrich-contract-is-only-a-start/22caabf7-f9b5-4da0-8709-8c66b48e78e6/.

political document" that was "never meant to be a governing document."[105] The aide went further to say "We don't care if the Senate passes any of the items in the contract. It would be preferable, but it's not necessary. If the freshmen do everything the contract says, they'll be in excellent shape for 1996, and we can add to our majority in Congress. But if we compromise the contract in order to pass laws, we lose support."[106]

Nearly twenty-five years later, Rep. Nancy Pelosi (D-CA)'s "For the People" agenda had similar political success – Democrats gained a majority in the House of Representatives – yet was unable to move in a Senate controlled by Republicans. The agenda followed several before it created by Pelosi and subject to focus groups, including: Six for '06, created for the 2006 midterm campaign; Reigniting the American Dream, developed in 2011; Ladders of Opportunity in 2012; and, A Better Deal in 2017.[107] The "For the People" slogan and eventual agenda, as explained by Rep. Cheri Bustos (D-IL), co-chair of the Democratic Policy and Communications Committee, is pure campaign messaging, meant to tell the American people that "Democrats hear you, we agree with you and we are fighting for the people each and every day."[108] Opposition party agendas provide a clear messaging tool for the minority party, as

[105] Major Garrett, "Beyond the Contract." *Mother Jones*, March/April 1995. Accessed July 17, 2020. https://www.motherjones.com/politics/1995/03/beyond-contract/.
[106] Ibid.
[107] Robert Draper, "Nancy Pelosi's Last Battle." *The New York Times*, November 19, 2018. https://www.nytimes.com/2018/11/19/magazine/nancy-pelosi-house-democrats.html.
[108] Elizabeth Landers and Dana Bash, "House Democrats Pick New Slogan Ahead of Midterms: 'For the People'." *CNN*, July 18, 2018. https://www.cnn.com/2018/07/18/politics/house-democrats-midterms-message-for-the-people/index.html.

Tulis describes State of the Union rebuttals, to "beam to the people over the head of the president" and the other party in Congress.[109]

Televised Congress

The introduction of a televised congress in 1979 gave rank-and-file members of Congress opportunities to develop their brand and amplify their message to the public. Previously unknown members suddenly had the ability to circumvent leadership to become nationally recognized, if their rhetoric was newsworthy.[110] Members no longer "had to play by inside rules to receive inside rewards or avoid inside setbacks. One could 'go public' and be rewarded by national attention."[111]

Congressional leadership took notice of the important role that this new media attention played in public opinion. In the 1980s, after Congress became televised, "public opinion polling became a regular staple of congressional party leadership planning."[112] As congressional speeches and hearings aired on television, and clips from Congress became more prevalent in the news, the importance of public opinion on congressional rhetoric within the halls of Congress grew. The Republican takeover in 1994 can be traced to a strategic effort to control party member messaging in Congress

[109] Tulis, *The Rhetorical Presidency*, 181.
[110] Norman J. Ornstein, The Open Congress Meets the President. In Anthony King, ed., *Both Ends of the Avenue*. Washington, DC: American Enterprise Institute, 1983, 201.
[111] Ibid., 202.
[112] Douglas B. Harris, "Partisan Framing in Legislative Debates." In Brian Schaffner and Patrick Sellers, ed., *Winning with Words* (New York: Routledge, 2010), 44.

and in the news, and "a result of [House Minority Whip Newt] Gingrich-directed efforts at wordplay."[113] House Republicans went to great lengths to develop their rhetoric, enlisting Frank Lutz, a public opinion expert, to help tone "key words, phrases and ideas" that would best position the party for success in the upcoming midterm elections.[114] There were other reasons for congressional leadership to focus on a messaging strategy, as they saw the imposing threat of the rhetorical presidency controlling the narrative, and "framing as a necessary strategy to compete with more media-savvy and media capable White House."[115]

With respect to media presence, members of Congress can often be divided into two categories: "work horses," who are focused on passing legislation, and "show horses," focused on self-promotion and media attention.[116] Concerns quickly arose about the potential negative effects of these show horse members, who by the early 1980's had "become dominant in Congress with the ascendancy of television as a major news source and with the introduction of televised floor proceedings in 1979."[117] Perhaps stating the danger to congressional deliberation most astutely, former Congressman Clem Miller (D-CA) commented that "the Congressman who tailors his speech and remarks to the strictures of modern reporting is going to get in the news;

[113] Ibid.
[114] Ibid., 45.
[115] Ibid., 46.
[116] Timothy E. Cook, "House Members as Newsmakers: The Effects of Televising Congress." *Legislative Studies Quarterly* 11, no. 2 (1986): 203-26. Accessed July 16, 2020. www.jstor.org/stable/439876, 204.
[117] Ibid.

and he who doesn't is going to have difficult sledding. It means that many capable legislators operate fairly silently, while others who might be of inferior competence are heard from quite frequently."[118] The impact on congressional deliberation could be felt immediately.

Social Media and Mass Communication

Mass communication, significantly evolved since DiIulio's observations in the early twenty-first century with the development of social media, has had a similar impact on the ability of Congress to fulfill its constitutional responsibilities. Developed further to reflect the current environment, where social media and an increasingly polarized mass media creates echo chambers of partisan rhetorical noise, one can see how the concept of a rhetorical – or post-rhetorical – presidency can be extended to Congress. Members speaking to highly partisan outlets with highly partisan soundbites are viewed almost exclusively by segments of the population that align with them politically, only reinforcing this polarization instead of good-faith deliberation.[119]

Justin Vaughn's argument that the rise of cable television, twenty-four-hour news, conservative talk radio, the internet and social media all contribute to a "highly decentralized media system rings true; today, an individual essentially can find

[118] Ibid.
[119] Mark Jurkowitz, Amy Mitchell, Elisa Shearer, and Mason Walker, U.S. Media Polarization and the 2020 Election: A Nation Divided, *Report*. Washington: Pew Research Center, 2020, 4.

information sources that cater to their preferences regardless of where they fall on the ideological spectrum."[120] The result, Vaughn declares, "is an electorate that exists within an infinite number of echo chambers."[121] These infinite echo chambers, composed of partisan influencers on Twitter and Facebook, talk radio personalities and pundits on cable news shows hosted by media outlets like Fox News, MSNBC and CNN, have the ability to reframe or drown out rhetoric from the White House and Congress, instead of amplifying it. The public, however, as Tulis understands it, still demands leadership and action from its elected officials, even when rhetoric is ineffective at moving legislation and now ineffective at even controlling a consistent narrative across fragmented subsets of the population. Even if a president or a member of Congress manages to break through this noise, they are reaching an ever-polarized population "immune from persuasion."[122]

Conclusion

With the rise of the rhetorical presidency, Congress found itself in an awkward position. No longer the only branch in direct communication with the public and ceding power to the executive throughout the twentieth century, it adapted and evolved, finding opportunities to develop and test messaging and new ways to compete with the

[120] Justin Vaughn, "*The Post-Rhetorical Presidency of Barack Obama.*"
[121] Ibid.
[122] Ibid.

president. When hearing rooms and the floor of the House and Senate added television cameras, individual members quickly found opportunities to use rhetoric to build their brand and reputation at the expense of congressional deliberation, a key component of a functional legislative branch. As the State of the Union moved to television in the 1940s, the minority party in Congress eventually responded with a nationally televised rebuttal. These rebuttals, however, aren't directed at the president or even the opposite party in Congress with the purpose of building consensus and moving legislation; instead, they are designed as campaign tools to win elections. The same can be said about an opposition party's legislative agenda, like "Contract with America" and "For the People." These aren't proposals meant to be deliberated in Congress, they are campaign messaging tools, often tested in focus groups and written with messaging professionals.

The evolution of mass communication, the development of twenty-four-hour news, talk radio, the internet, and social media all play significant roles in both providing a means for Congress and the White House to communicate their messaging while, eventually, drowning out that same communication through infinite, polarized echo chambers where rhetoric no longer has the same power it once enjoyed. Members of Congress may find themselves with large Twitter followings and endless opportunities to speak on prime-time cable news shows, helping them to raise vast amounts of money for their campaigns but ultimately only reaching partisan viewers

who share similar political views, rendering the policy messaging ineffective in contributing to a deliberative legislative body envisioned by the Founders.

Chapter 3: Party Strategy and the Motion to Recommit in the House

Political strategy plays a key role in the development and utilization of legislative tools. One tool afforded by the majority party to the minority party in the U.S. House of Representatives is the motion to recommit with instructions (MTR), sometimes called the "minority's motion." Over its evolving history, the majority party has at times both restricted and strengthened the motion. For example, in 1995, when Republicans took control of the House, the party took steps to strengthen the MTR by prohibiting the House Rules Committee from preventing the offering of the motion.[123] After forty years in the minority, Republicans at the time understood the importance of minority party rights. More often, however, the majority party takes steps to restrict the use of the MTR and implement rules that prohibit it from being offered on certain legislation because of its potential as a rhetorical weapon against its members in upcoming elections.

When in the minority, Republicans have been more successful using the MTR to divide the majority coalition, sometimes securing enough votes for the motion to pass, and often putting House Democratic leadership in a difficult position where they have been forced to either table the legislation or let it pass with the amended language. Democrats, in contrast, rarely gain any support from Republicans for their MTRs and

[123] U.S. Library of Congress, Congressional Research Service, The Motion to Recommit in the House of Representatives, by Megan S. Lynch, R44330 (2016), 7.

often use the "No" votes on the motion in campaign ads against vulnerable members in targeted districts. MTRs drafted by Democrats appear tailored for this exact purpose; the policies they address often reflect those the Democratic Congressional Campaign Committee have identified as most likely to gain the vulnerable Republican seats in the next election.

What determines success for each party and ultimately what factors go into each's strategy for drafting and reacting to the motion will help us better understand the value this minority party legislative tool serves in the legislative process. To understand how each party approaches the motion to recommit, this chapter will undertake a comparative case study reviewing MTRs offered by each party when in the minority. Using public information like roll call votes, texts of MTRs, text of the legislation, floor speeches by supporters and opponents of the motion and political campaign ads referring to votes on these motions, this chapter will review individual MTRs offered by each party and attempt to find consistencies in their strategies. By analyzing how the parties have used and responded to the MTR, this chapter seeks to understand the MTR in the context of theoretical research available on legislative politics while examining the strategies behind the introduction of and response to these motions.

The Motion to Recommit

There are generally two types of motions to recommit in the House. The first, called a straight motion, is an attempt by the minority party to send a bill directly back to committee without a vote on the floor. If approved, this straight motion to recommit effectively kills the bill. The second type of motion, which includes instructions, is more prevalent in usage because of its potential to frame a political narrative. The motion to recommit with instructions to report forthwith substitutes the original bill for an amended version, "meaning that if the House adopts such a motion, the measure remains on the House floor, and the committee chair (or designee) immediately rises and reports the bill back to the House with any amendment(s) contained in the instructions of the recommittal motion."[124] If the motion to recommit is rejected, then a final vote is taken on the original bill that was being considered on the House floor. Often, these motions to recommit include language that is strategically framed to fraction the majority's coalition, threatening the underlying legislation, or forcing vulnerable members to make votes that could be used against them in their next campaign.

There are several restrictions on the types of instructions that can be included in a motion to recommit. Instructions must propose amendments that are germane to the

[124] Ibid., 3.

legislation being debated; they cannot propose to amend or eliminate amendments already adopted in the House (unless permitted by special rules); and, they may not violate House rules related to appropriations bills and the House CUTGO rule, which affects legislation that would increase mandatory spending.[125]

The motion to recommit as a tool for the minority has existed since the first Congress, but operated in a different capacity before 1909. Prior to changes in the early twentieth century, priority for recognition in offering the motion was reserved for a member who supported the bill, not one in opposition. As then Speaker of the House Joseph Cannon (R-IL) noted, "The object of this provision was, as the Chair has always understood, that the motion should be made by one friendly to the bill."[126] This changed when Speaker Cannon was pressured by progressive Democrats and members of his own party to give more power to the minority party by changing the motion to recommit from a majority motion to a minority motion.[127] In 1932, House Speaker John Nance Garner (D-TX) cemented this right of the minority when he ruled that the motion to recommit belonged to the minority party. As Democrats controlled the House through the 1970s and 1980s, however, they "used special rules to proscribe the

[125] Ibid., 4.
[126] Clarence Cannon, Cannon's Precedents of the House of Representatives of the United States (Washington: GPO, 1936), vol. VIII, §2762.
[127] Donald Wolfensberger, "The Motion to Recommit in The House: The Creation, Evisceration, and Restoration of a Minority Right", in Party, Process, And Political Change in Congress, 2nd ed. Stanford: Stanford University Press, 2007, 271

contents of instructions minority Republicans could offer in their motion to recommit."[128]

When Republicans gained the majority in the House of Representatives in 1995 – after having been in the minority for over forty years, watching the majority party restrict amendments and MTRs – they sought to restore the rights of the minority, particularly with respect to the motion to recommit. Norman Ornstein, explains what happened next: Rep. David Dreier (R-CA) "crafted a rule to make [the motion to recommit] with instructions virtually automatic. As the California Republican proclaimed at the time, an era where the minority party was hampered at being able to offer its alternative vision for policy would be replaced by one where that right would be guaranteed."[129] Republicans, who understood and used the power of legislative rhetoric, framed to speak directly to the people to secure the majority, voted to "prohibit the Rules Committee from reporting a special rule that would prevent the offering of a motion to recommit with instructions, thereby preventing the Rules Committee from restricting the scope or content of the motion to recommit."[130]

Section 210 of House Resolution 6, titled *Affirming Minority's Right on Motions To Recommit*, prohibited the House Rules Committee from reporting a special rule that

[128] Ibid., 272.
[129] Norman Ornstein, "The Motion to Recommit, Hijacked By Politics", American Enterprise Institute, Last modified 2010, http://www.aei.org/publication/the-motion-to-recommit-hijacked-by-politics/print/.
[130] Lynch, *The Motion to Recommit in the House of Representatives*, 7.

would deny the minority "the right to offer amendatory instructions in a motion to recommit if offered by the minority leader or a designee."[131] Prior to these changes, the minority had the right only to offer a simple motion to recommit. Prohibiting the Rules Committee from restricting the type of motion to recommit that could be offered effectively gave the minority party the power to use the motion for political messaging purposes, often with little-to-no advance notice provided to the majority party.

When Democrats took control of the majority in the 110th Congress, they saw a high number of motions to recommit with "non-forthwith" instructions offered by the minority. These motions were used specifically as a political tool by Republicans to put Democratic members in difficult political positions, often frustrating party leadership by threatening the success of their legislative agenda. During just the first session of the 110th Congress, House Republicans successfully passed nearly a quarter of the MTRs offered.[132] House Speaker Nancy Pelosi had a policy of allowing Democrats in more conservative districts to occasionally vote to support these motions.[133] Republicans also "frequently changed the wording of their motions, which had the effect of killing the bill, rather than returning it amended to the chamber floor for a final passage vote."[134]

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[131] U.S. Congress, House, Committee on Rules, Affirming Minority's Right on Motions to Recommit, November 26, 1996, 104th Congress, 2nd Session, 1996, H. Rep. 104-868.
[132] Sarah A. Binder et al., "Assessing the 110th Congress, Anticipating the 111th," Mending the Broken Branch 3 (January 2009): p. 9, https://www.brookings.edu/wp-content/uploads/2016/06/0108_broken_branch_binder_mann.pdf)
[133] Ibid.
[134] Ibid.

At the time, critics of the Republican's use of the MTR argued that the apparent strategy behind these specific types of MTRs was clearly political in nature.[135] MTRs were not being introduced "because they represented the minority party's alternative vision for dealing" with a particular policy; rather, instead they were offered because "they were designed to kill bills by offering red herring 'gotcha' amendments."[136] These critics viewed the motions as being "drafted in such a way that members were loath to vote against them, even if the proposed changes would have no practical effect."[137] The goal for Republicans was not to pass legislation that reflected their policy priorities; it was to use a legislative tool to frame a narrative that would make it difficult for the majority party to defend their "no" vote in the public.

In the 111th Congress, in response to the Republican's MTR strategy in the 110th Congress and with Democrats in control of the House, Senate, and White House, House rules were amended to restrict the use of the MTR by requiring that "A motion to recommit a bill or joint resolution may include instructions only in the form of a direction to report an amendment or amendments back to the House forthwith," effectively limiting the "term of permissible instructions" that could be included. [138] This

[135] Norman Ornstein, "*The Motion to Recommit, Hijacked By Politics*", American Enterprise Institute, Last modified 2010, http://www.aei.org/publication/the-motion-to-recommit-hijacked-by-politics/print/.
[136] Ibid.
[137] Walter Oleszek et al., *Congressional Procedures & The Policy Process*, 10th ed. Thousand Oaks: CQ Press, 2016, 226.
[138] U.S. Congress, House, Rules of the U.S. House of Representatives of the United States One Hundred Fifteenth Congress, 114th Cong., 2nd sess., 2017, H. Doc. 114–192.

rule change forces a full vote in the House without delay regardless of the outcome of the vote on the motion to recommit. The majority party, in this case the Democratic Party, structured the rules in a way that acknowledged the disadvantage in which the MTR put its members, but it didn't completely prohibit it.

Partisan vs. Nonpartisan Legislative Theories on the Motion to Recommit

The real power of the motion to recommit appears not to be its legislative potential to influence policy; instead, the value lies in its ability to allow the minority party to offer strategic amendments designed specifically to divide the majority party.[139] Party cartel theory considers majority party power to be nearly absolute in the House, relying on party cohesion and control of legislative rules and procedures to dominate the agenda.[140] Under this theory, a motion to recommit should never be successful because of the superior numbers of the majority, or, if that is insufficient, the majority's power to control the legislative agenda and rules. By "usurping power to craft rules that facilitate moving policy toward the majority party's ideal position" the majority party relies not only on party cohesion, "but also through the strategic structuring of legislative rules and procedures" to gain control over the agenda.[141] This theory may

[139] Gary Cox, Chris Den Hartog and Matthew McCubbins, "*The Motion to Recommit in the U.S. House of Representatives*", in Party, Process, And Political Change in Congress, 2nd ed. Stanford: Stanford University Press, 2007, 297.
[140] Gary Cox, Mathew D McCubbins. *Setting the Agenda: Responsible Party Government In the U.S. House of Representatives*, Cambridge: Cambridge University Press, 2005, Ch. 2.
[141] Jennifer Hayes Clark. *Minority Parties in U.S. Legislatures: Conditions of Influence*. Ann Arbor: University of Michigan Press, 2015. http://www.jstor.org/stable/10.3998/mpub.7329083.

help explain how Republicans are able to defeat MTRs and why Democrats changed the rules, but provides an incomplete assessment of the whole picture. Why have Democrats in the majority been unable to defeat some MTRs, particularly over the past 20 years? Why does the majority party allow the minority the ability to offer a motion to recommit at all?

Party cartel theory ignores exogenous political realities that vulnerable members can face in upcoming elections if they fail to support a well-crafted motion to recommit offered by the minority. Additionally, it ignores the political realities that party leaders face when trying to change House rules. Many more moderate members of the party may not support a rule change that restricts minority rights because of a message of partisanship and unfairness that can send to their constituents. Another consideration may be more long-term: The party in the majority now may end up in the minority soon; restricting the rights of the minority can have consequences that they themselves could face after the next election. This is a dynamic that has played out in the Senate with the filibuster.

Nonpartisan legislative theorists believe the motion to recommit acts as a balancing mechanism for the minority party in the House, again, similar to the filibuster in the Senate. In a study of the theoretical consequences of the MTR using spatial modeling, Keith Krehbiel and Adam Meirowitz, argue that the motion to recommit with

instructions is [142] Krehbiel and Meirowitz conclude that the motion to recommit gives the minority party power that can be used in legislative bargaining.[143] This relies on a basic assumption outlined by Krehbiel which discounts the role of parties and partisanship in the House and instead elevates the individual ideological preferences of its members to explain legislative behavior.[144] Arguments against this nonpartisan theory criticize Krehbiel and Meirowitz as providing "an inaccurate representation of House procedures and fail[ing] to predict empirical patterns in recommittal motion usage."[145]

The conditional party government theory offered by John Aldrich and David Rohde perhaps offers the most complete explanation and understanding of the MTR, why the Republican Party in the House is more successful using it to secure majority votes, and why Democrats are not. Conditional party government argues that the motion to recommit is less likely to be successful in gaining majority-party votes when the majority party is more cohesive and the parties are more ideologically polarized.[146] In this environment, that is, when the two parties – and likely the country in general –

[142] Keith Krehbiel, Adam Meirowitz, *Minority Rights and Majority Power: Theoretical Consequences of the Motion to Recommit*. Legislative Studies Quarterly, Vol. 21, No. 2 (2002): 211.
[143] Ibid., 212.
[144] Keith Krehbiel. "Where's the Party?" British Journal of Political Science 23, no. 2 (1993): 235-66. www.jstor.org/stable/194249.
[145] Jason M Roberts. 2005. "*Minority Rights and Majority Power: Conditional Party Government and the Motion to Recommit in the House.*" Legislative Studies Quarterly 30 (2): pg 220. doi:10.3162/036298005X201527.
[146] David W Rohde. 2013. "*Reflections on the Practice of Theorizing: Conditional Party Government in the Twenty-First Century*." Journal of Politics 75 (4): 849–64. doi:10.1017/S0022381613000911.

are polarized and the party itself is more cohesive, rank-and-file members are less likely to go against party leadership because the party base in their districts are aligned with the party, or at least aligned in opposition the other party. Alternatively, when the two parties are less polarized and the country is less polarized, the likelihood of rank-and-file party members voting against their party – perhaps by taking more centrist positions – increases.

Conditional party government theory helps to explain the current climate where the parties are polarized but the Republican party is more ideologically homogeneous than the Democratic party. Average trends show that the Republican Party has moved further to the right in the House than Democrats have moved to the left.[147] As a result, the Republican party can more easily both fend off MTRs and create ones that succeed in dividing Democrats. This may help explain why Democrats overall are less likely achieve any success in passing their MTRs – or even gain any Republican votes. Left without a realistic goal of legislative success, the Democrats, when in the minority, must resort to another strategy for the use of their MTR: campaign ads.

The minority party is rarely successful using the motion to shape legislation and advance policy, but the MTR may find more value in influencing political outcomes outside of the Congress than policy priorities within. To understand the power of the

[147] Steven S. Smith, Jason M. Roberts, and Ryan J. Vander Wielen. The American Congress, 4-5. Cambridge: Cambridge University Press, 2011. doi:10.1017/CBO9781139059312.

motion to recommit under the context of conditional party government, this chapter will take into account the political value that an unsuccessful motion can present; that is, as a potential attack ad in an upcoming election. By examining how each party uses the motion to recommit differently as a result of their own internal political dynamics, this article seeks to update past research and complement the work with new variables and in a broader context, where Congress is in a rhetorical competition with the president, particularly if the minority party in the House is the opposition party to the president. Using votes, bill language, floor speeches and campaign ads, this article conducts a comparative study that analyzes how both Republicans and Democrats have most recently used the motion when in the minority and, under conditional party government, explains why each took that approach.

Recent History of the Motion to Recommit in the U.S. House of Representatives

Republicans offered a motion to recommit with "forthwith" instructions a total of seventy-two times in the 110th Congress before the rules was changed, with twenty-four of them adopted – a success rate of thirty-three percent.[148] Democrats, who had been in the minority for the previous twelve years, saw an average success rate of only sixteen percent, including none in the 109th Congress.[149] With such a relatively low

[148] U.S. Library of Congress, Congressional Research Service, The Motion to Recommit in the House of Representatives: Effects and Recent Trends, by Megan Suzanne Lynch, RL34757 (2011), 13.
[149] Ibid.

success rate of adoption – even when used effectively as Republicans did in the 110th Congress – votes on these motions to recommit are often used in campaign ads targeting vulnerable members. If a member of the majority party votes against a motion that exploits a popular policy in their home district, regardless of the actual merits of that policy, they may see an ad highlighting that vote – sometimes taken out of context – in an upcoming election. As a result, these motions have a history of putting the majority party leadership in challenging positions where they must hold together often fragile coalitions by allowing some of these members to vote against the party.

H.R.2272, The America COMPETES Act

In the 110th Congress, Republicans used the motion to recommit with instructions on the America COMPETES Act, a bill that provided a significant amount of federal funding for science education, research, and training. The bill had been approved in committee with strong bipartisan support. Moments before it was to face a vote on the House floor, however, Rep. Ralph Hall (R-TX) moved to recommit with instructions, attempting to send the bill back to the Science and Technology Committee. These instructions included an amendment that restricted any of the funds from being authorized "to pay the salary of any individual who has been officially disciplined for… viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government

duties."[150] The motion also included amendments that would have cut the funding authorizations down from five years to two while abolishing every new program established by the legislation and freezing funding levels until the federal budget was balanced. Vulnerable Democrats, fearing potential campaign ads or other communications highlighting their vote against the pornography provisions, voted to approve the motion. As a result, Democratic leadership was forced to remove the bill from the floor before it faced a full vote.

For Norman Ornstein, the Republican motion offered on the America COMPETES Act was proof that "the motion to recommit with instructions has for more than a decade become a hollow vehicle and a farce… far more often than not the minority has eschewed the chance to use it to offer constructive amendments to bills or to show a minority alternative vision, and instead has used the gotcha route."[151] The motion, he noted, was an attempt "to force Democrats to withdraw their bills – and more importantly, to set up thirty second attack ads against vulnerable Members for supporting child molesters and pornography." He lamented its use as a poison pill on a bipartisan bill like the America COMPETES Act that elicited little division or controversy. Ornstein argued that the measure on pornography could not have been that important to Republicans since it had not been brought up in committee or as an

[150] America COMPETES Reauthorization Act of 2010, H.R. 5116, 110th Cong., 2nd sess., *Congressional Record* H3452, 4.
[151] Norman Ornstein, "The Motion to Recommit, Hijacked By Politics", American Enterprise Institute.

amendment to the bill; rather, it was only introduced at the last minute in an obvious attempt to kill the bill and embarrass Democrats.[152]

The MTR was successful because "at the start of the 110th Congress, Speaker Pelosi ended the previous majority's practice of making votes on motions to recommit strict party-line affairs."[153] Democratic leadership recognized the political reality that by forcing their rank-and-file members in vulnerable districts to vote the party line, they may either lose that battle and see some members vote against the party anyway, or see ads targeting those members in the next election and potentially lose their majority. Democratic leadership did not have the party cohesion and support to keep their members in line.

H.R. 21, the Midnight Rules Relief Act

As recently as the 2018 midterm elections, votes against MTRs by vulnerable members of the majority party have been used in campaign ads. House Democrats used the motion nearly eighty times in the 115th Congress. None of the motions succeeded in gaining any Republican support, showing the strength of the Republican coalition and party discipline. Predictably, some of these votes against MTRs ended up playing a central role in the midterm campaigns.

[152] Ibid.
[153] Sarah A. Binder et al., "Assessing the 110th Congress, Anticipating the 111th," p. 9.

The Democratic Congressional Campaign Committee (DCCC) released an attack ad against Rep. Brian Fitzpatrick (R-PA) highlighting his vote on a motion to recommit. After redistricting in Pennsylvania, Rep. Fitzpatrick was facing a difficult reelection against Democrat Scott Wallace; the race was considered a "toss-up" as late as October 2018.[154] One of the key policy messages for Democrats in the midterm elections was based on Republican efforts to dismantle Obamacare and, specifically, its provision that bars insurance companies from refusing to cover people who have a preexisting health condition. The ad against Rep. Fitzpatrick highlighted his vote on a motion to recommit from 2017:

> If you have a preexisting condition, Brian Fitzpatrick sold you out. Brian Fitzpatrick sided with Donald Trump and the insurance industry. He voted against protecting people with preexisting conditions three separate times when the insurance industry gave Brian Fitzpatrick $140,000, and Donald Trump is backing his campaign. Five million Pennsylvanians have preexisting conditions, but Brian Fitzpatrick sided with Donald Trump and the insurance industry.[155]

[154] Ryan Kelly, "Some House Members Face Toss-Up Races — And New Voters, Too", Roll Call, Last modified 2018, https://www.rollcall.com/news/politics/house-members-face-whole-new-electorate-2018.
[155] Glenn Kessler, "Democratic Attack Ad Falsely Knocks Republican on Preexisting Conditions", Washington Post, 2018, https://www.washingtonpost.com/politics/2018/10/15/democratic-attack-ad-falsely-knocks-republican-preexisting-conditions/?utm_term=.8d8e9132f549.

The motion to recommit referred to in the ad was offered on H.R. 21, the Midnight Rules Relief Act, on January 4, 2017. This bill, which passed the House but did not move in the Senate, would have allowed Congress to disapprove multiple regulations under the Congressional Review Act. The motion to recommit offered on H.R. 21 contained instructions that would have reported the bill back to the Judiciary Committee with an amendment that prohibited insurance issuers from discrimination based on gender or preexisting conditions while prohibiting out-of-pocket costs for seniors for prescription drugs covered under Medicare Part D. No Republicans voted to support the motion, including vulnerable members like Rep. Fitzpatrick.[156]

Rep. Darryl Issa (R-CA) spoke in opposition to the motion on the House Floor:

> The motion to recommit specifically sends [the bill] back to the committee. That is not necessary. The fact is that if [Rep. Castor, D-FL, who offered the motion] wanted these changes and wanted them enacted immediately there is a procedure to do so. So, I rise in opposition because this is certainly something that would delay, would send this back to committee, and cause it to come back again.[157]

[156] Midnight Rules Relief Act of 2017, On Motion to Recommit with Instructions, H.R. 21, 115th Cong., 1st sess., Office of the Clerk, U.S. House of Representatives, January 4, 2017.
[157] Midnight Rules Relief Act of 2017, H.R. 21, 115th Cong., 1st sess., *Congressional Record* 163 no. 2, 84.

Rep. Issa implies that the motion was clearly designed with one goal in mind: to set up vulnerable Republicans for attack ads in the next election. For further proof of this political strategy, consider that Rep. Krysten Sinema (D-AZ) was the only Democrat to vote against the motion, citing that it was not germane to the underlying legislation, which she supported. Sinema, who would later that year announce a run for the Arizona Senate, certainly did not see any attack ads run against her by the DCCC for voting against the measure.

H.R. 8, the Bipartisan Background Checks Act of 2019

H.R. 8, the Bipartisan Background Checks Act of 2019, was an important part of the Democratic party's platform during the 2018 midterm elections that saw them regain control of the House. The bill would, among other things, establish new background checks on firearm transfers and prohibit the transfer of a gun between two private parties without a licensed dealer or manufacturer conducting a background check. Rep. Doug Collins (R-GA) moved to recommit the bill with instructions that would have required the background checks to notify the U.S. Immigration and Customs Enforcement (ICE) if it identifies an individual who is in the country illegally. Twenty-six Democrats supported the motion, giving it enough votes to secure approval; many of the Democrats who supported it were first term members who flipped

historically more conservative districts,[158] and many of these members "privately expressed concerns about the GOP using these votes against them in campaign ads."[159]

The motion to recommit offered on H.R. 8 succeeded in putting many House Democrats in challenging positions. After it was approved, more progressive members like Rep. Alexandria Ocasio-Cortez (D-NY), who campaigned on abolishing ICE, had to choose between supporting tougher restrictions on firearms and supporting legislation that would give the agency more authority to crack down on illegal immigrants. House Democratic leadership had a difficult decision to make. As Vox reported at the time, "According to various reports, [House Speaker Nancy] Pelosi wants to take a harder line on procedural votes [i.e., the motion to recommit] that allow Democrats to join with Republicans, but her deputies, Steny Hoyer (MD) and Jim Clyburn (SC), have wanted to give passes to members from tougher districts."[160] Leadership's inability, or unwillingness, to control its members shows how broad the new Democratic coalition was in the House and the vulnerabilities that created. Without the ideological homogeneity and party discipline that Republicans shared while in the majority, Democrats were unable to force members to vote against MTRs.

[158] Bipartisan Background Checks Act of 2019, On Motion to Recommit with Instructions, H.R. 8, 116th Cong., 1st sess., Office of the Clerk, U.S. House of Representatives, February 27, 2019.
[159] Heather Caygle, John Bresnahan and Sarah Ferris, "House Democrats Weigh Rules Change After GOP Floor Victory", Politico, 2019, https://www.politico.com/story/2019/02/27/house-rules-change-democrats-1194626.
[160] Dylan Scott, "The Arcane Procedural Drama That Has House Democrats Seething, Explained", Vox, 2019, https://www.vox.com/policy-and-politics/2019/3/1/18244934/motion-to-recommit-bipartisan-background-check-act.

H.R. 3239, The Humanitarian Standards for Individuals in Customs and Border Protection Custody Act

The Humanitarian Standards for Individuals in Customs and Border Protection Custody Act, H.R. 3239, imposed new requirements and standards related to the care of immigrants in the custody of Customs and Border Patrol. Republicans again were successful in securing enough votes for a MTR that, in this case, amended the bill to include a Sense of Congress that "the men and women of the U.S. Border Patrol should be commended for continuing to carry out their duties in a professional manner, including caring for the extraordinarily high numbers of family units, unaccompanied alien children, and single adults processed in United States Customs and Border Protection facilities referenced in this Act."[161] In a speech on the House floor, Rep. Adam Kinzinger (R-IL) urged support of the bill, concluding that "If this Congress cannot agree to provide these agents the resources they need, as this bill fails to do, at least we can, the least we can do is affirm our appreciation for their work. Agreeing to this motion to recommit will not impact the passage of this bill. Voting in favor of this will not kill the bill that we're voting on here today."[162] Forty-one Democrats voted to support the bill, against the wishes of Speaker Pelosi, who reportedly "warned would-

[161] Humanitarian Standards for Individuals in Customs and Border Protection Custody Act, H.R. 3239, 116th Cong., 1st sess., Congressional Record H7348.
[162] Ibid.

be defectors that Democratic resources are best reserved for those who vote with the party," according to reports.[163]

Conclusion

Each party approaches votes on MTRs differently when in the majority. For Republicans in the majority, the party has historically had the support of rank-and-file members that allows leadership to frame the vote "as a procedural vote that all party members were expected to oppose." [164] For Democrats, who "averaged fewer than two wins per year during the twelve years of Republican control," leadership did not believe they had the party cohesion and support necessary to force this vote, and instead "decided that asking all their members to vote against every MTR no matter its content would endanger some of the members they most needed to protect."[165]

Under conditional party government, ideological homogeneity within a party leads to more authority delegated from rank-and-file members to party leadership. Republicans have proven to be more cohesive as a party and therefore have more party discipline, rendering them less susceptible to the temptations presented by well-crafted MTRs. Republicans have relied on this party cohesion to defeat the MTR while

[163] Juliegrace Brufke. " House Republicans score fourth major procedural win with motion to recommit". The Hill, 2019.
[164] Barbara Sinclair. *Unorthodox Lawmaking: New Legislative Processes In the U.S. Congress*. 5th ed. Washington, D.C.: CQ Press, 2012. P 44.
[165] Ibid.

Democrats, perhaps in many respects lacking the same level of cohesion and accounting for the political realities that its vulnerable coalition faced, at times allowed its members more flexibility in their votes and at other times were unable to exert control over those votes. This is best explained by the conditional party government theory provided by Aldrich and Rohde, where "as partisan-based elections increasingly elect members whose policy preferences are similar within and differentiated between the two parties, these members choose to strengthen partisan organizations within the House," allowing for stronger party leadership and greater party cohesion.[166]

Without the same levels of ideological homogeneity and party cohesion, Democrats resort to the next-best result when crafting their MTRs: using them in political ads for vulnerable Republicans in targeted districts, part of their rhetorical arsenal to retake the majority. Democrats therefore are not necessarily less successful in passing their MTRs because of any difference in strategy; instead, they are accounting for the political realities as explained by conditional party government theory and crafting their MTR to succeed in the only way it can. With this understanding, a logical question can be asked: Why is the motion to recommit still afforded to the minority party if its purpose is purely political?

[166] John H. Aldrich and David W. Rohde. 1997. "The Transition to Republican Rule in the House: Implications for Theories of Congressional Politics." Political Science Quarterly (Academy of Political Science) 112 (4): 541. doi:10.2307/2657691.

Conclusion

In early 2021, a rash of gun violence once again plagued the nation, and a Democrat once again resided in the White House. Faced with an ambitious agenda that prioritized the coronavirus pandemic and infrastructure, both physical and social, the Biden administration had limited options to show real action. Though Democrats controlled both chambers of Congress, the narrow margins left no opportunity for significant legislation. On April 7, 2021, recognizing these realities, Biden followed in the footsteps of his recent predecessors by signing a series of executive orders to take action instead of attempting to move his preferred gun control policies through Congress. Almost exactly like President Obama's actions on gun control, which then Vice President Biden spearheaded, President Biden announced actions to address gun violence.[167] One can only assume the true impact of these actions will be limited in scope, particularly if a Republican wins the White House in 2024 and reverses these actions, like President Trump did to Obama's executive orders.

The concept of the rhetorical presidency explains how presidents have transformed the executive office from head of government, at a distance from the people and with rigid, constitutionally-defined rules defining how it communicates

[167] "FACT SHEET: Biden-Harris Administration Announces Initial Actions to Address the Gun Violence Public Health Epidemic" 2021. *The White House*. https://whitehouse.gov/briefing-room/statements-releases/2021/04/07/fact-sheet-biden-harris-administration-announces-initial-actions-to-address-the-gun-violence-public-health-epidemic/

with the legislative branch, to executor of popular will, harnessing the energy of the people by interpreting and shaping public opinion to drive policy goals. As communication technology evolved through the twentieth and twenty-first centuries, the executive office adapted, harnessing its potential through radio, television, and finally on the internet and social media. The rhetorical presidency – and, by extension, the rhetorical Congress – of the twenty-first century is an ever-changing concept, constantly evolving and reacting to new technology as each branch struggles to gain attention and define the narrative. In each iteration, it extends further and further from the government designed by the Founding Fathers, charting new territory as the branches develop rhetorical strategies aimed at capturing and controlling the popular will.

This thesis addresses critical questions identified by Jeffrey Tulis and others around the concept of a rhetorical presidency and finds that the rhetorical presidency has now entered a post-hyper rhetorical world, where the rhetoric of presidents no longer holds the same power it once did. The so-called "bully pulpit" still gives presidents a powerful platform to speak, but that speech is no longer able to penetrate the echo chambers of a partisan media, whether it's traditional media or on social media. Presidents may still be able to drive the agenda in Congress, but only when their party is in control of both chambers and only through careful strategizing and prioritizing.

Chapter One, The Post-Rhetorical Presidency, explored the rise and current state of the rhetorical presidency by applying its concepts to specific examples of legislative success by modern presidents who understood how to harness the power of the bully pulpit to drive policy through Congress. President Ronald Reagan, "the Great Communicator" who spent a career in radio and film perfecting the art, entered office as the rhetorical presidency doctrine was developed by James Ceaser, Glen E. Thurow, Jeffrey Tulis, and Joseph Bessette. After winning reelection in 1984, Reagan traveled the country to pass his signature Tax Reform Act of 1986, which defined the United States tax system for the next thirty years. Implementing a campaign-style approach, even going so far as to coin a slogan, he spoke to crowds across the nation about the need to reform the system, comparing his effort to the American Revolution and imploring audiences to contact their representatives and urge them to help him pass his reform bill.

The Reagan White House developed a rhetorical strategy that focused on building support in the public to force Congress to act, even when many members didn't consider tax reform a top priority and his party did not control the House. The strategy understood the importance of media to amplify a message at a time when twenty-four-hour-news was in its early stages and his speeches were broadcast across the country. This tactic paid off, and the president was able to secure bipartisan support for a negotiated reform effort that completely overhauled the Code.

George W. Bush spent much of his time in the presidential campaign of 2000 selling his tax reform plan to the public, pledging lower taxes while tying the effort to populist arguments against big government, the potential for economic stimulus, and a moral obligation for the nation to return money to the people when there was a budget surplus. Bush continued his push for tax reform when he entered office, telling the public in news conferences and speeches, including one on the front lawn of the White House, about the need for Congress to pass his $1.6 trillion plan. In his first address to a joint session of Congress, Bush spoke directly to the people, over the heads of Congress by urging members to pass his plan and give Americans, who he said had been overcharged, a refund. In the end, even with Republican control of both chambers, a bipartisan plan was negotiated and signed into law.

By the time Barack Obama came to office, the internet had revolutionized politics and the Obama campaign of 2008 understood its ability to organize and build support. Considered a great communicator, Obama used every rhetorical tool in his arsenal to build support for the Patient Protection and Affordable Care Act, including the addition of a visual component in his messaging on social media and YouTube. The president traveled the country giving speeches at campaign-style rallies, doing virtual town halls on various social media platforms, and even speaking directly to Republicans at a televised event, but was unable to garner any bipartisan support for his health care plan. Using and expanding on many of the same tactics that the Reagan and Bush White

Houses utilized to gain bipartisan support, Obama's efforts fell flat on a highly partisan Congress, and his rhetoric was filtered through endlessly partisan outlets that shaped the narrative on the legislation early on. Not only did the White House fail to attract any Republican support, passage of the law created a highly effect messaging weapon for the opposition in future elections.

For Donald Trump, the new dynamic in presidential rhetoric was clear: Focusing on rallying the country to pursue bipartisan support was futile; the game had changed. As he strategized with Republicans in Congress to pass his signature legislative achievement, the Tax Cuts and Jobs Act of 2017, there were few, if any, attempts at bipartisanship. As the president held rallies across the country, instead of urging audiences to write their members of Congress to help pass tax reform he implored them to vote for Republicans to replace Democrats who didn't support him or his plan. Instead of attempting to negotiate with potential Democratic supporters like Sen. Joe Manchin (D-WV), the White House and Republicans passed the bill without any Democrats voting in favor or participating in negotiations. The Trump White House understood that the president's rhetoric would not effectively reach or persuade his opponents, but he still had to deliver on a campaign promise.

The second chapter, A Rhetorical Congress, focused on the response by the legislative branch to the rhetorical, hyper-rhetorical, and now post-rhetorical presidency, and the harmful effects that this development has on its ability to

deliberate. Applying the concepts of the rhetorical presidency to Congress, it becomes clear that in each response from Congress to adapt to this new rhetorical reality its ability to function was impacted negatively. The congressional response to the State of the Union, a constitutionally unnecessary action by the legislative branch, was developed because leaders in Congress recognized the advantage given to a president during the nationally-televised, primetime address. The responses, however, are not deliberative in nature, but instead have the effect of undermining deliberation as the opposition speaks past presidents and the other party, directly to the people. As Joseph Wysocki concludes, these speeches are not a function of governing but of campaigning.

Opposition party legislative agendas also serve as campaign messaging tools and not actual policy priorities. The second chapter reviews the "Contract with America" agenda developed by Rep. Newt Gingrich (R-GA) and concludes that its list of priorities was not designed to actually become law. Created by messaging and communications experts and poll-tested, the Contract with America served its function by securing the majority for Republicans in the 1994 midterm elections. The same could be said about Rep. Nancy Pelosi's (D-CA) "For the People" agenda, which helped Democrats win the majority but was not passed into law.

The introduction of a televised Congress in 1979 and the development of twenty-four-hour news also had deleterious effects on the legislative branch's ability to deliberate. Previously unknown members of Congress suddenly had the opportunity to

circumvent leadership and build a national persona. As the news media became more fragmented and partisan, members had incentive to become "show horses" focused on self-promotion. This trend culminated with social media, where members, like presidents, speak to echo chambers of partisan noise that drowns out rhetoric from opposing viewpoints. Individual members may have a large presence on social media, with millions of followers who help fund their campaigns, but, like presidents, they are unable to break through the partisan divide, rendering their policy messaging ineffective at contributing to the deliberative process.

The third chapter, on the Motion to Recommit in the House of Representatives, concludes this look at the rhetorical government by reviewing a legislative tool afforded to the minority party, providing a ground-level opportunity to see the negative effects rhetorical developments have on the governing process. Political strategy plays a key role in the use of the MTR, as it provides the minority party a last chance to amend legislation before it faces a vote on the House Floor. However, instead of using this opportunity to contribute the party's policy vision germane to the legislation, the minority uses the MTR as a rhetorical grenade designed to fracture the majority coalition and force vulnerable members of Congress to make political difficult votes that can be used in attack ads upcoming elections.

While each party may approach the MTR differently, which can be explained by conditional party government theory, each uses it as a weapon instead of an

opportunity to amend legislation in good faith. The MTR's ability to put vulnerable members in difficult positions renders it a tool for destruction and not deliberation. In 2020, recognizing the danger of the MTR, Democrats passed a rule that leaves the motion to recommit "toothless," giving the minority party the option only to send the legislation back to committee and delay the outcome.[168] This perhaps inevitable development recognizes the reality of the motion, a legislative tool that had evolved to a rhetorical campaign weapon.

These developments in rhetoric and communication, first understood by the executive office in the early twentieth century, forced members of Congress, particularly the opposition, to respond, further alienating the two branches as they increasingly speak past each other. This trend can be seen not only on social media, in newspapers or on television, but in the halls of Congress, where hearings, markups, floors speeches, responses to the State of the Union, and even legislative motions introduced on the Floor of the House are crafted to speak directly to the people, in campaign terms, and not the White House or even the majority party. Increased polarization in the country and within the media has created infinite echo chambers of partisan filters through which rhetoric is shaped. The bully pulpit of elected office, even

[168] Andrew. Taylor, 2021, "Democrats Tighten Control with House Rules Changes." *The Associated Press*, January 4, 2021. https://apnews.com/article/legislation-coronavirus-pandemic-nancy-pelosi-fce0c1079db207aaa15d146e19ab4f2d.

the presidency, no longer provides the same strategic value it once did, forcing presidents and Congress to adapt once again.

Applying these findings to President Biden's first one hundred days in office brings predictable results. Biden, known for strong bipartisan relationships in the Senate, passed a massive COVID-19 stimulus bill, his top campaign priority, without the support of any Republicans, through reconciliation. The Biden White House, filled with experienced staff who clearly learned lessons from the Obama administration, then followed up with an infrastructure package and light attempt to gain some bipartisan support, though it seems unlikely to receive enough votes to avoid reconciliation. Recently, in a move President Wilson would likely approve, a senior advisor to President Biden announced that, "if you looked up 'bipartisan' in the dictionary, I think it would say support from Republicans and Democrats… It doesn't say the Republicans have to be in Congress."[169] This new view of bipartisanship means a president no longer even needs votes from members of the other party to claim bipartisan support, as long as polling numbers suggest some broad support of the policy.

[169] Ashley Parker, "Facing GOP Opposition, Biden Seeks to Redefine Bipartisanship," The Washington Post, April 11, 2021, https://www.washingtonpost.com/politics/biden-bipartisan/2021/04/11/65b29ad8-96f0-11eb-b28d-bfa7bb5cb2a5_story.html.

In the modern rhetorical presidency, there is a fundamental disconnect that presidents inevitably encounter. No longer can rhetoric aimed at the public build bipartisan support for signature legislative achievements, as it did with presidents Reagan and Bush. With social and traditional media echo chambers controlling the lens through which much of the public digests communications from the president, the power of persuasion is not as accessible as it once was. This new reality is realized in one of Tulis' primary concerns, that the rhetorical presidency created a system where the act of speaking became as tangible as the act of passing laws. The public still expects action, but a large segment, divided by ideology, no longer believes the rhetoric of presidents they do not support. Without a majority in Congress to move their agenda, presidents are forced to act with executive orders that often do not carry the same weight and are reversed almost immediately after the next president's term begins.

This gulf between what is expected of presidents and members of Congress and the realities of elected office is a significant barrier to a more deliberative and efficient government. As this relatively new reality continues to develop, there are some solutions that are worth consideration. In Congress, removing television cameras from hearing rooms and the floor may reduce transparency, but would end the need for members to script hearings and markups with talking points designed for viewers, and perhaps lead to more serious deliberation.

Developing a viable third-party option, or, preferably, multiple alternative parties, may help resolve some of the problems created by the rhetorical presidency. The two-party system exacerbates these problems by forcing the electorate into one of two ideologies, with little room for nuance. Each policy is black and white, and elected officials must adhere to party ideology to control the narrative and win elections. A viable third party would create a new dynamic where negotiation may be the only way to move legislation, creating more sound law. A system with multiple parties could, of course, create even more of these media echo chambers with a more fractured media landscape, but the risk is outweighed by a potential for new media to focus on centrist policies that bridge coalitions. A viable third and fourth party may not be able to win the presidency now, but all candidates for the office would have to appeal to these voters, or form coalitions to win. Proportional representation, where parties win seats in Congress proportional to the number of votes they receive, would go a long way towards opening the current two-party system and creating an environment where rhetoric would have to accommodate this new reality, possibly by moving to the center and favoring bipartisanship.

More study should be focused on the potential implication for a White House that no longer seriously considers bipartisanship for passing its large-scale legislative agenda items. President Joe Biden, who entered office claiming high hopes of working with Republicans in Congress to pass COVID-19 stimulus and infrastructure legislation,

is now facing the reality that budget reconciliation is the only way to move his agenda. As this reality becomes more apparent to candidates for office, it will be interesting to see how they adapt; will bipartisanship no longer be a message of campaigns in the general election when it is nearly impossible to achieve it in office? The disconnect between the idea and reality of governing may need to be realized before a president enters office so that their campaign promises better align with the realities of an environment where rhetoric is not accepted as action.

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